(26,335)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 868.

JOHN DILLON

vs.

STRATHEARN STEAMSHIP COMPANY, CLAIMANT OF STEAMSHIP "STRATHEARN."

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 3, 1918.

1 In the United States Circuit Court of Appeals, Fifth Circuit.

Number 3140.

JOHN DILLON, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern District of Florida.

Silas Blake Axtell, L. W. Nelson, W. J. Waguespack, and Herbert W. Waguespack, for appellant.

J. E. D. Yonge, for appellee.

Frederick R. Coudert and Howard Thayer Kingsbury, specially appearing on behalf of the British Vice-Consul at Pensacola, Florida, as amicus curiæ.

Before Walker and Batts, Circuit Judges, and Evans, District Judge.

Statement of the Case.

The appellant, John Dillon, a subject of Great Britain, shipped at Liverpool, England, on May 8, 1916, as carpenter, on the steamship "Strathearn", then and at the time of the filing of the libel in this case a vessel of British registry and enrollment, owned by the
2 Strathearn Steamship Company, Limited, a corporation organized and existing under the laws of Great Britain. By the shipping articles signed by him the appellant agreed to serve "on a voyage from of not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude. Commencing at Liverpool—proceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master." On that voyage the Strathearn proceeded from Newport News to a port in South America, and from the last-named port to Pensacola, Florida, arriving there on July 31, 1916. On August 2, 1916, while the Strathearn was in the port of Pensacola, John Dillon, who was still in the employment of the ship as carpenter, demanded of the master of the ship one-half of the wages he then had earned. The master refused to comply with this demand, and no payment was made thereon. Prior to the time of that demand nothing had been paid to Dillon on his wages since the ship left a port in South America about two months before. At the time the demand was made the amount of wages earned by Dillon, less what had been paid him thereon, was approximately $125, no part of which was due under the terms of the shipping articles signed by Dillon. After

the master refused to comply with Dillon's said demand the latter on the same day filed in the District Court of the United States for the Northern District of Florida a libel in admiralty against the ship in which he claimed $125, the amount of wages alleged to have been earned when said demand was made and compliance with it refused.

The District Court rendered a judgment dismissing the libel.

3 'The case was brought to this court by appeal. In this court the action of the District Court in dismissing the libel was sought to be sustained on the ground that section 4 of the Act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea," (38 U. S. Statutes at Large, 1164), in so far as it provides "that this section shall apply to seamen on foreign vessels while in the harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement," is violative of the Constitution of the United States.

Whereupon, this court desiring the instruction of the Honorable the Supreme Court of the United States for the proper decision of the questions arising in this case touching the constitutional validity of the above-mentioned statutory provision, it is hereby ordered that the following questions and propositions be certified to the Supreme Court of the United States of America in accordance with the provision of section 239 of the Judicial Code, to-wit:

First. Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto;

4 and to promote safety at sea," violative of the Constitution of the United States?

Second. Is section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?"

For information as to the facts of the case copies of the transcript and briefs are herewith transmitted.

Witness our hands this 30th day of January, 1918.

(Signed) R. W. WALKER,
Circuit Judge.

(Signed) R. L. BATTS,
Circuit Judge.

(Signed) BEVERLY D. EVANS,
District Judge.

5 UNITED STATES OF AMERICA,
Fifth Judicial Circuit, ss:

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of John Dillon, Appellant, versus Strathearn Steamship Company, Claimant of Steamship "Strathearn", appellee, was duly filed February 4th, 1918, and entered of record in my office by order of said Court, and, as directed by said Court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of New Orleans, Louisiana, this 4th day of February, A. D. 1918.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

5½ [Endorsed:] No. 3140. United States Circuit Court of Appeals for the Fifth Circuit. John Dillon, Appellant, vs. Strathearn Steamship Company, Claimant of S/S "Strathearn, Appellee. Statement of the case and questions certified to the Supreme Court of the United States.

Endorsed on cover: File No. 26,335. U. S. Circuit Court Appeals, 5th Circuit. Term No. 868. John Dillon vs. Strathearn Steamship Company, Claimant of Steamship "Strathearn." (Certificate.) Filed February 15th, 1918. File No. 26,335.

Supreme Court of the United States,

OCTOBER TERM, 1917.

JOHN DILLON,
Appellant,

against

STRATHEARN STEAMSHIP COMPANY, LTD., Claimant of the Steamship "STRATHEARN",
Appellee.

No. [redacted]361
October Term, 1917.

NOW COMES the Strathearn Steamship Company, Ltd., claimant of the Steamship "Strathearn", the appellee above named by its counsel Ralph James M. Bullowa, and moves that this cause be advanced upon the docket of this court and set down for hearing at an early date to be fixed by this court upon the following grounds:

1. This is a suit in admiralty by a seaman of the Steamship "Strathearn" to recover the amount of wages alleged to have been earned by him, and claimed by him to have become due and payable by virtue of the provisions of the Act of Congress (Section 4530 of United States Revised Statutes) known as the "Seamen's Act". The appellee defended on the ground that such act, if construed as claimed by libellant, was unconstitutional. By leave of court the British Vice-Consul at Pensacola, Florida, by direction of the British Ambassador, intervened as *amicus curiae* and sub-

mitted a brief upon the construction and constitutionality of the Act. The District Court rendered judgment dismissing the libel. The libellant appealed to the United States Circuit Court of Appeals for the Fifth Circuit, which after due consideration certified the following questions to this court:

First: Is Section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea", violative of the Constitution of the United States?

Second: Is Section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?"

By leave of Court, a brief was submitted in the Circuit Court of Appeals by the British Vice-Consul as *amicus curiae*.

2. This cause involves important questions of moment to the entire shipping world.

3. Numerous cases have been and are now being brought throughout the United States based upon

the statute referred to in the questions certified to this court, the decisions of the various District Courts are not in harmony, and it is important that a decision of this court be had as to the constitutionality and construction of the Statute.

4. The legal questions involved in this cause have a direct bearing upon the shipping of the United States and of its allies in the present war, and it is to the public interest that these questions should be determined by this court as speedily as possible. Upon the construction of the Act contended for by the appellant, the soundness of which we challenge, foreign vessels, especially British, are being stripped of their crews in American ports and are greatly delayed pending the obtaining of new crews. This was expressly admitted by appellant's counsel in the Circuit Court of Appeals, and is, of course, the natural result of such construction of the statute. If that construction be found by the Court to be correct, we submit that the statute is not Constitutional.

5. The questions involved are of International importance, and are of especial concern to the British Government. Counsel for the British Embassy has been instructed to apply for leave to be heard as *amicus curiae* and to concur in this application to advance.

Dated, March 25th, 1918.

RALPH JAMES M. BULLOWA,
Counsel for Appellee.

Notice is hereby given that the foregoing motion will be presented to the Supreme Court of

the United States on Monday, the 25th day of March, 1918, at the opening of court on that day.

Dated, March 16th, 1918.

RALPH JAMES M. BULLOWA,
Counsel for Appellee.

Service of a copy of the foregoing motion and notice is hereby admitted.

March 16th, 1918.

Counsel for Appellant.

No. 8[redacted]361

Supreme Court of the United States,

OCTOBER TERM. 1917.

NO. 868.

JOHN DILLON,
Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, LTD., CLAIMANT OF THE STEAMSHIP "STRATHEARN",
Appellee.

Now comes Frederic R. Coudert, Esq., counsel for the British Embassy in the United States of America, and moves for leave to intervene in the above entitled cause as *amicus curiae*, and as such *amicus curiae* to file a brief and be heard upon the argument thereof, and also to concur in the motion made or to be made herein by the appellee to advance this cause for hearing upon the docket of this Court; all upon the following grounds:—

1. Upon the hearing of this cause in the District Court of the United States for the Southern

District of Florida, the British Vice-Consul at Pensacola, by direction of the British Ambassador, intervened by leave of Court as *amicus curiae* and filed a brief by the undersigned as counsel, and in the Circuit Court of Appeals for the Fifth Circuit the said British Vice-Consul in like manner by leave of Court again intervened as *amicus curiae* and filed a further brief by the undersigned as counsel.

2. The questions involved in this cause and certified to this Court by the Circuit Court of Appeals are of vital importance to the British Government by reason of the large number of British merchant vessels that come into American ports and the great amount of commodities, munitions and men, essential to the prosecution of the war, transported upon such vessels. Upon the construction of the Act of Congress of March 4th, 1915, known as the Seamen's Act, contended for by the appellant, such vessels are in great danger of being stripped of their crews in American ports and delayed by the necessity of replacing seamen who are induced to leave by the opportunity thus afforded to collect one-half of their wages and then desert their vessels. In the brief submitted by the appellant in the Circuit Court of Appeals he admitted that the result of this construction was "the demanding by hundreds of seamen of one-half of the wages they shall have earned up to date of their arrival at ports of the United States", and that "it naturally follows that these "seamen, having obtained one-half wages, desert "their ships, taking with them what effects they "can."

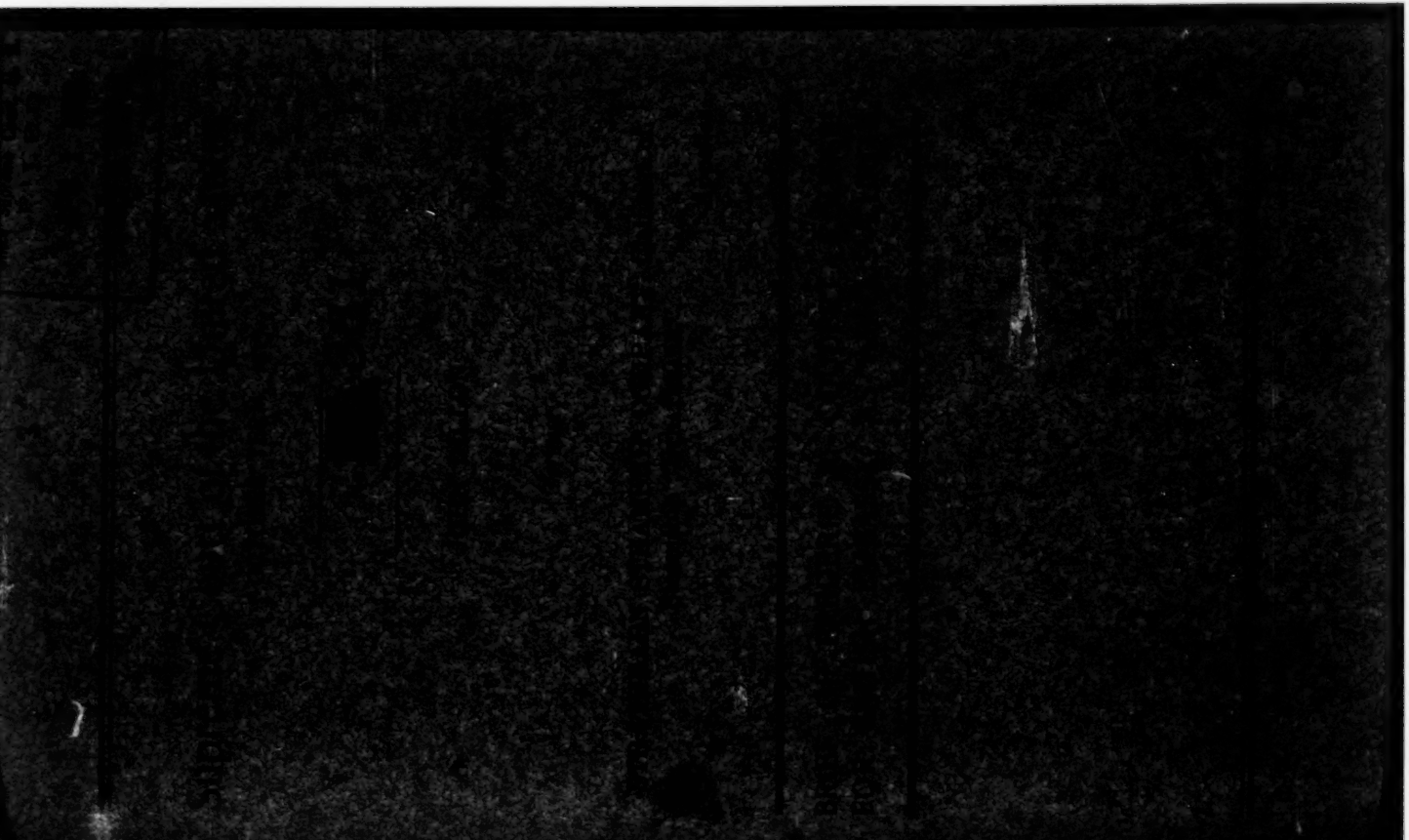
3. On behalf of the British authorities it was contended in the District Court and in the Circuit

Court of Appeals that the Seamen's Act of March 4th, 1915, does not apply to foreign seamen shipped in a foreign port on a foreign vessel under an agreement, valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, and that if so construed as to be applicable to such a case the statute would exceed the legislative power of the United States and would violate the Constitution of the United States.

4. The construction of the statute contended for by the appellant has been followed by certain of the District Courts of the United States. The construction and constitutionality of the statute have not yet been determined by this Court. Every delay in the departure of a vessel, caused by the necessity of replacing deserting seamen, or by the institution of suit under the said provision of the Seamen's Act such as the case at bar, impedes the successful prosecution of the present war and thus injures the interests of the United States of America as well as of the British Government. Such delays frequently occur. It is thus of great importance both to this country and to the British Government that a decision of these questions by this Court should be had as speedily as possible.

Dated March 25th, 1918.

FREDERIC R. COUDERT,
Counsel for the British Embassy in the United States of America;
Amicus Curiae.
2 Rector Street, N. Y.



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Authorities Cited.

Supreme Court of the United States,

OCTOBER TERM, 1917.

No. 868.

JOHN DILLON,
Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, claimant of the Steamship Strathearn,
Appellee.

Brief of Frederic R. Coudert, Counsel for British Embassy, as Amicus Curiae.

STATEMENT OF FACTS.

This case comes before this Court on certification by the Circuit Court of Appeals for the Fifth Circuit of two questions of law, relating to the "Seamen's Act" of March 4th, 1915, commonly known as the "La Follette Act." These questions may be briefly stated as follows:

1. Is §4530 of the United States Revised Statutes, as amended by the "Seamen's Act", constitutional?
2. Is such section constitutional as applied to "seamen on foreign vessels while in harbors of the United States?"

For the information of this Court, the entire Record has been certified to it. Where the Record is referred to in this brief the paging of the Record in the Circuit Court of Appeals is intended.

The suit was brought in the District Court of the United States for the Northern District of Florida, and resulted in a dismissal of the libel (*The Strathearn*, 239 Fed. Rep. 583).

By direction of the British Ambassador, the British Vice-Consul at Pensacola, Florida, applied for and obtained leave to intervene in the District Court as *amicus curiae*, and submitted a brief in regard to the construction, application and effect of the provisions of the "Seamen's Act" invoked by the libellant. By like direction a similar application was made in the Circuit Court of Appeals, and by leave of court a brief was submitted on behalf of the British authorities.

The determination of the questions presented by this case is of vital importance both to this country and to the British Government by reason of the great number of British merchant vessels that come into American ports and the large proportion of American commerce that is carried in British bottoms. In the natural course of events the crews upon such vessels are, for the most part, shipped in British jurisdictions. It is essential to the interests both of American commerce and of the British Merchant Marine, and to the proper conduct of the war, that such vessels thus coming to American ports should be able to retain their crews for the homeward voyage, and that the transportation of commodities, munitions and men should not be interrupted and delayed by the necessity of replacing foreign seamen who leave their vessels in circumstances such as those shown in this case.

Under the present Seamen's Act the power to arrest deserting seamen by legal process has been abolished, the Act becoming effective in this regard as rapidly as existing treaties on the subject are abrogated. In this case the appellant seeks to secure a construction of the Seamen's Act which will take away the only remaining hold of British ship masters upon their seamen. The British authorities answer that if the Act is to be so construed it is unconstitutional.

The facts presented by this Record are these:

The libellant (a British subject) shipped as carpenter on the British Steamship *Strathearn* at Liverpool, England, on May 8th, 1916 (Rec. p. 19). At the time of signing the Shipping Articles he received an advance on account of his wages. By the Articles the libellant agreed to serve

> "on a voyage not exceeding three years du-
> "ration to any ports or places within the
> "limits of seventy-five degrees North and
> "sixty degrees South latitude, commencing
> "at Liverpool—proceeding thence to New-
> "port News and (or) any other ports within
> "the above limits, trading in any rotation,
> "and to end at such port in the United King-
> "dom, as may be required by the Master"
> (Rec., p. 16).

The Articles contained no provision for payments on account of wages during the voyage, but on the contrary guarded against such payments by providing:

> "No cash shall be advanced abroad or lib-
> "erty granted other than at the pleasure of the
> "Master" (Rec., p. 17).

The *Strathearn* sailed from Liverpool to Newport News, thence to South America, and from

South America to Pensacola, where she arrived on July 31st, 1916. This was the first port in the United States where she was to unload cargo. The vessel arrived in the evening and began to unload on the morning of the following day, August 1st, (Rec. pp. 22, 23.) The libellant left the ship without permission and went ashore. (Rec. p. 24.) On the evening of August 2nd, after being ashore, he returned and first demanded to be paid off and afterwards asked for half wages. Both requests being refused he again left the ship and filed the libel in this cause, demanding full wages.

The material portions of the statute under consideration are as follows:

> "Sec. 4530. Every seaman on a vessel of "the United States shall be entitled to re- "ceive on demand from the master of the "vessel to which he belongs one-half part of "the wages which he shall have then earned at "every port where such vessel, after the voy- "age has been commenced, shall load or de- "liver cargo before the voyage is ended and "all stipulations in the contract to the con- "trary shall be void: *Provided*, such a de- "mand shall not be made before the expira- "tion of, nor oftener than once in five days. "Any failure on the part of the master to "comply with this demand shall release the "seaman from his contract and he shall be "entitled to full payment of wages earned. "* * * *And provided further*, that this "section shall apply to seamen on foreign "vessels while in harbors of the United "States, and the courts of the United States "shall be open to such seamen for its en- "forcement."

The District Court held that the rights of the parties were to be determined by the foreign law to which they were subject, that the libellant's de-

mand was premature, and that the case did not come within the purview of the Seamen's Act.

In the Circuit Court of Appeals, the libellant-appellant contended that this construction was incorrect, that his demand was not premature, and that the American statute and not the law of the flag applied and governed the case. The claimant-appellee and the British authorities replied that if the statute were construed as claimed by appellant, it was unconstitutional. The Circuit Court of Appeals held the case under advisement for a time and then certified the constitutional questions to this Court.

Brief of the Argument.

On behalf of the British Government it is respectfully submitted:—

1. In order to determine the constitutionality of the statute, its construction must first be considered.

2. The statute should be so construed as not to apply to foreign seamen shipped in a foreign port on a foreign vessel under an agreement, valid where made, whereby such seamen are not entitled to payment of their wages until the completion of the voyage.

3. If so construed as to be applicable to the case at bar, the statute would exceed the legislative power of the United States.

4. If so construed as to be applicable to the case at bar the statute would violate the Constitution of the United States.

5. A decision by this Court is needed by reason of the conflicting decisions of the lower courts.

POINT I.

In order to determine the constitutionality of the statute, its construction must first be considered.

This cause is properly here by certification under §239 of the Judicial Code, and the entire Record is actually before this Court. The questions certified relate in terms only to the constitutionality of the statute, but implicit in every question of constitutionality is a preliminary question of construction, unless the language of the statute is so plain and unambiguous that only one construction is possible.

The procedure followed by this Court in such a situation was succinctly expressed by the Chief Justice in Billings *vs.* United States, 232 U. S. 261, at p. 279, as follows:

> "To avoid if it may be the necessity of determining the constitutional question, we shall first decide what, if any, burden the statute imposes, and then if necessary consider its asserted repugnancy to the Constitution."

See also Towne *vs.* Eisner, 245 U. S. 418, 425.

So in the case at bar, it must first be decided "what, if any, burden the statute imposes" upon "foreign vessels while in harbors of the United States," and then whether the imposition of such burden violates the Constitution.

POINT II.

The statute should be so construed as not to apply to foreign seamen shipped in a foreign port on a foreign vessel under an agreement, valid where made, whereby such seamen are not entitled to payment of their wages until the completion of the voyage.

The statute does not apply in terms to *foreign* seamen, shipped in a *foreign* port on a foreign vessel, which thereafter comes into a harbor of the United States to load or deliver cargo. The provision under consideration reads:—

> "This section shall apply to seamen on "foreign vessels while in harbors of the "United States."

It is not expressly made applicable in this respect to *foreign* seamen and the purpose of the Act can be fulfilled without thus straining its language.

The title of the Act is:

> "An Act to promote the welfare of *Ameri-* "*can* seamen in the merchant marine of the "United States; to abolish arrest and im- "prisonment as a penalty for desertion and "to secure the abrogation of treaty provi- "sions in relation thereto; and to promote "safety at sea."

It is not an Act to promote the welfare of *foreign* seamen, or of seamen generally, but of *American* seamen, and it should not be extended by construction so as to apply to foreign seamen

in cases where such application would conflict with their existing contractual or statutory duties and obligations.

It is true that the title of an Act may not "be used to add to or take from the body of the statute," but it may and should "be considered in determining the intent of the legislature."

> See Holy Trinity Church *vs.* United States, 143 U. S. 457, at p. 462.

...

See also United States *vs.* Palmer, 3 Wheat. 610, in which Chief Justice Marshall said, at p. 631:

> "The words of the section are in terms of "unlimited extent. The words 'any person "or persons' are broad enough to compre- "hend every human being. But general "words must not only be limited to cases "within the jurisdiction of the state, but also "to those objects to which the legislature in- "tended to apply them. * * * The title "of an Act cannot control its words, but may "furnish some aid in showing what was in "the mind of the legislature. The title of "this Act is 'An act for the punishment of "certain crimes against the United States'. "It would seem that offences against the "United States, not offences against the hu- "man race, were the crimes which the legis- "lature intended by this law to punish."

So, in the statute under consideration, although the words "seamen on foreign vessels while in harbors of the United States" may be grammatically broad enough to include *all* seamen, foreign as well as American, yet the title of the Act clearly indicates that Congress had in mind American, not foreign, seamen, as the objects of its solici-

tude, and it is not to be supposed that Congress was unaware that its action must necessarily be "limited to cases within the jurisdiction" of the United States.

The case of Patterson *vs.* Bark *Eudora,* 190 U. S. 169, invoked below by the appellant, is not an authority to the contrary. There the Court considered a provision of the Seamen's Act then in force, making it unlawful to pay any seaman advance wages and providing "that this Section shall apply as well to foreign vessels as to vessels of the United States." It was contended that the statute was "beyond the power of Congress to enact, especially as applicable to foreign vessels." The Court took into consideration the fact that the title of the Act was "An act to amend the laws relating to American seamen", but held that the Act was applicable to seamen who had received an advance payment upon shipping on a foreign vessel in an *American* port.

In the *Eudora* case the libellants, who were seamen on board a British bark, sued upon the completion of the voyage for wages for the full term of service, ignoring an advance payment which they had received when they shipped at Portland, Maine. It appears from the Record that "one or more" of the libellants were American citizens and the nationality of the others is not stated. The Court held (p. 179) that it was within the power and was the intention of Congress

> "to protect all sailors *shipping in our ports* "* * * and that our Courts are bound to "enforce those provisions in respect to for- "eign equally with domestic vessels."

Where seamen ship in an American port, the contract is necessarily made within the territorial

jurisdiction of the United States. Within certain limits, the Government of the United States may lawfully regulate such contracts, and such regulations may be enforced in litigations arising under such contracts in the Courts of the United States. In such case the privileges of extra-territoriality usually afforded to foreign merchant vessels are deemed to have been withdrawn *pro tanto* by the sovereign power. But the United States has no power to regulate or abrogate contracts lawfully made between foreigners in their own country.

Upon the principles above indicated, the present Act should be construed as applicable only to seamen shipped in an American port on vessels which remain for a time in or afterwards return to an American port to load or deliver cargo. The ruling of the District Court, that the relations of the parties are governed by the law of England, is consistent with this construction.

There is another construction which was suggested in Clyma *vs.* Steamship *Ixion,* 237 Fed. Rep. 142, in a decision rendered on exceptions to the libel. There the Court held that since the libel showed

> "that wages were *earned while in the port "of Seattle,* demand made within the provi- "sions of Section 4530 *supra* as amended, "and payment refused, a cause of action is "stated,"

and the exceptions to the libel were accordingly overruled. The case has not yet been decided on the merits.

This ruling merely decided that the Act might be applicable to wages actually earned by a for-

eign seaman on a foreign vessel while in an American port.

The construction of the statute thus indicated would at least limit its operation to wages actually earned within the territorial jurisdiction of the United States, although under a foreign flag, and would thus be less disruptive of foreign commerce than the construction urged by libellant in the case at bar. The decision of the District Court here, that in any event the libellant's demand was premature, is to this extent in line with the *Ixion* case.

Another construction which might be deemed open to consideration would be to make the statute applicable to seamen of American nationality upon foreign or domestic vessels, irrespective of the port of shipment. Seamen are regarded, to a certain extent, as "wards of the Admiralty" the world over, subject to certain disabilities and entitled to special protection. It might be contended that each nation may regulate these disabilities at its own will, and that such disabilities inhere in the personal capacity of each individual and go with him wherever he may be, as for certain purposes do the disabilities of infancy and coverture and certain disabilities affecting the validity of marriages.

Upon this theory a ship master, engaging an American seaman in a foreign port, would take him with constructive notice of potential disabilities which might become legally operative if he should thereafter be brought within the territorial jurisdiction of his own country. This construction would have some logical relation with the general body of international private law, but would be at variance with the well established rule followed by the District Court in the case at bar,

that a seaman, shipping under a foreign flag, is governed by the law of that flag.

See *The Magna Charta,* Fed. Cas. #8953, 2 Lowell 136.
The Egyptian Monarch, 36 Fed. Rep. 773.
Wilson vs. *The John Ritson,* 35 Fed. Rep. 662.
The Belvidere, 90 Fed. Rep. 106.
The Ucayali, 164 Fed. Rep., 897.
Rainey vs. *N. Y. & P. S. S. Co.,* 216 Fed. Rep. 454.
The Elswick Tower, 241 Fed. Rep. 706.

The facts in the case at bar do not present this particular situation.

The appellant has cited *London Assurance Co.* vs. *Companhia De Moagens,* 167 U. S. 149, in support of the proposition that the validity and interpretation of a contract are governed by the place of performance. There, however, the contract was to be wholly performed in England. It is inconceivable that the contract of a seaman, as expressed in his shipping articles, should be governed by a different law at every foreign port where the vessel may touch. The law of a contract cannot be thus kaleidoscopic or chameleon-like.

The appellant has also cited *Wildenhus's Case,* 120 U. S. 1. There the Court merely held that the local courts had jurisdiction over a *crime* committed on board a foreign vessel in an American port, disturbing the "public order" of the port, and hence within the express exception of the treaty invoked, which gave consular jurisdiction over the "internal discipline" of Belgian vessels, in matters not affecting "public order."

POINT III.

If so construed as to be applicable to the case at bar, the statute would exceed the legislative power of the United States.

The statute cannot be made applicable in such a way as to nullify valid contracts lawfully made between foreigners in a foreign jurisdiction without transcending the legislative powers and jurisdiction of the United States. It is elementary that

> "the laws of no nation can justly extend be-
> "yond its own territories except so far as
> "regards its own citizens."
>
> See *The Apollon*, 9 Wheat. 362, at p. 370, per Story, J.
>
> Also Moore's International Law Digest, Vol. 2, §197, p. 213.

This is a general rule of international law based upon fundamental principles of jurisprudence, and is not confined to nations having a legislature created and circumscribed by a written constitution.

In the case at bar the libellant made in England a valid contract to serve for a voyage "not exceeding three years' duration, * * * and to end at such port in the United Kingdom as may be required by the Master." By the express statutes and the general law of the place where the contract was made, and of the nationality to which the vessel and the libellant belonged, this contract bound the libellant to serve out the entire period of employment under penalty of for-

feiture of his wages. The British statute on the subject (Merchant Shipping Act of 1894) is quoted in the claimant's answer and is in its essential portions as follows:

> §221. If a seaman lawfully engaged * * * deserts from his ship he shall be guilty of the offence of desertion and is liable to forfeit all * * * of the wages which he has earned." (Rec., p. 13).

This British statute is declaratory of the general maritime law of nations, as shown by many authorities, among which special reference may be made to the following:

> Abbott on Merchant Ships & Seamen, 14th Ed., p. 209.
> *The Bulmer*, 1 Hag. Adm. 163.
> *Button* v. *Thompson*, L. R. 4 C. P. 330.
> *The Baltic Merchants*, 1 Edw. Adm. 86.

It has always been recognized in this country heretofore that where a seaman contracted to serve during a certain voyage he must, in order to recover wages, allege and prove that he had fully performed his contract, or that he had been prevented from doing so by some circumstance amounting to a legal excuse.

> See *Wilcox* v. *Palmer*, 29 Fed. Cas. #17638.
> *The Leiderhorn*, 99 Fed. Rep. 1001.

It is also the general rule of the common law that any contract of employment for a definite period is an *entire* contract and must be fully performed to entitle the employee to recover.

> See 26 Cyc., pp. 1041, 1042 and cases cited.

The provisions of the Act under consideration are in derogation of the general rules of common law as long understood and applied in this country as well as in England and are based upon the theory that seamen are a special class requiring peculiar protection and therefore to be deprived within certain limits of the power of free contract. The Act should accordingly be strictly construed, and not extended by construction to matters or persons not within the legislative jurisdiction of the United States.

A limited construction was placed upon the former "Seamen's Act" in a very well considered decision of the late Addison Brown, well known as an Admiralty Judge, in the United States District Court for the Southern District of New York, in 1884.

See *The State of Maine*, 22 Fed. Rep. 734.

Here the Act discussed in the *Eudora* case, *supra*, forbidding the payment of advance wages, was sought to be applied to a case where the seamen had shipped in a foreign port upon an American ship. The Court held that the statute did not apply, although its language was

> "doubtless broad enough to embrace the ship-
> "ment of seamen in foreign ports, as well as
> "in ports of the United States."

The Court also said:

> "Statutes have no extra territorial force.
> "The shipment of seamen in a foreign port,
> "and the payment either of advance wages or
> "of bills previously incurred, as in this case,
> "as an advance of wages, are acts done and
> "completed wholly upon foreign soil; and
> "therefore wholly beyond the jurisdiction of

"this country. If American vessels be treated "as a part of the territory of the United "States, and within its jurisdiction, though in "foreign ports, still, acts like the present, "that are not done upon shipboard, but, as I "have said, are completed upon land prior to "the seamen's coming aboard and as a means "of procuring them to do so, would not be "done within the territorial jurisdiction of "this country. Every presumption is against "the supposition that Congress had any in- "tention to legislate in reference to acts done "and completed wholly beyond its jurisdic- "tion. And while Congress might, perhaps, "subject the Masters of American vessels, "upon their return to this country, to punish- "ment for acts done upon foreign soil, "though such acts were lawful there, still "such an intention would not be presumed. "Nor is such an intention sufficiently indi- "cated by mere general language, that can "be fully satisfied by its application to all "such acts committed within the territorial "jurisdiction of the United States. The in- "tention to include acts done on foreign ter- "ritory would only be inferred from some "specific provisions, showing an indisputable "intention to make the statute applicable to "acts committed beyond our territorial juris- "diction. The provisions of this statute are "not of that specific character."

See also *The Kestor*, 110 Fed. Rep. 432, 444.

In re Ross, 140 U. S. 453.

In two very recent decisions by the Circuit Court of Appeals, not yet reported, the same limitation has been placed upon the provisions of the present Act in regard to the payment of advance wages, and *The State of Maine* has been expressly approved and followed.

In McDonald *vs.* Sandberg, (*The Talus*), C. C. A., 5th Circuit, January 25, 1918, the Court held:

"We think the reasonable construction of "the Section is that it covers only such ad- "vances as it was within the competency of "Congress to criminally ~~publish~~ the making "of, viz: advances made within the territori- "al waters and jurisdiction of the country "by whomever and to whomever paid. This "gives the Section a legitimate field of opera- "tion. It was the purpose of Congress to "protect American seamen, as far as it had "jurisdiction to act. In doing so, in order "to avoid discrimination against American "ships, it was necessary to include foreign "vessels and sailors under like circum- "stance. There was, however, no policy to "be subserved in the interest of foreign sail- "ors, so far as the title to the Act shows, "and the debate upon it in Congress.

* * * * * * * * *

"The provisions of the Section, when so "construed, are broad enough to fully pro- "tect American sailors in American ports, "and possibly in foreign ports, and it was "not essential to the end in view to include "advances to foreign sailors on foreign ships "in foreign ports. The debates in the Sen- "ate show no wider purpose to have been "in the purview of the legislators. The "abrogation of existing treaties was neces- "sary, though the scope of the Act was con- "fined to advances made in American ports, "both for the purpose of transferring wage "disputes on foreign vessels to the courts of "the United States from the consular courts "of the treaty nations, as provided for in "Section 4 of the Act, and to enable the pro- "visions of the law with regard to arrests "for desertion to be executed, without con- "flicting with existing treaties. Provisions

"in the Act to that end do not support ap-
"pellees' contention.

"It is further contended that, though the
"statute is not itself applicable to advances
"made in foreign ports to foreign seamen by
"foreign ships, it outlines a policy against
"the making of such advances anywhere, and
"that pursuing that policy, the courts of the
"United States will not recognize such ad-
"vances. The case of Arden Lumber Com-
"pany *vs.* Henderson Iron Works, 83 Ark.
"240, is cited by appellees in support of this
"contention. The policy of the United
"States respecting advances to seamen is
"only exhibited by the Section of the act in
"question and the corresponding sections of
"its predecessors, and in all these acts, as
"we construe them, this policy was confined
"to advances made to American seamen and
"to foreign seamen, only while in American
"ports. No policy against the making of
"advances to foreign seamen in foreign
"ports by foreign ships, where the law of
"the country permits it, can be deduced
"from them; nor do the debates in Congress
"upon the La Follette Bill show a wider pur-
"pose than the protection of American sea-
"men against advances, the inclusion of for-
"eign ships and seamen being incidental
"only and to avoid discrimination against
"American ships. The usual rule is that
"where a contract involves no moral turpi-
"tude, but is *malum prohibitum* only, if it is
"valid where made, it will be held valid in
"the courts of the United States elsewhere
"than where it was made, when rights are
"predicated upon it, though it would be in-
"valid if made there. Ward *v.* Vosburgh, 31
"Fed. 12; Lehman *v.* Felf, 37 Fed. 852; Wil-
"hite *v.* Houston, 200 Fed. 390; Berry *v.*
"Chase, 146 Fed. 625."

Again, in Hardy *vs.* Barkentine *Windrush* and Neilson vs. Sailing Ship *Rhine,* C. C. A., 2nd Circuit, February 14, 1918, the Court, considering the same question, held:

> "The absurdity of considering the ship "captains indictable is not denied; therefore "the contention becomes this, that this exe- "cuted contract must be set aside, because "the statute in effect declares it repugnant "to the 'policy and morality' of the people "of the United States.
>
> "We discover no consensus on this point of "morals in the written law, there is no evi- "dence on the subject, and the rule appealed "to ordinarily affects only executory con- "tracts. The situation here is this, libellants "demand a part of their wages in accordance "with the law of the United States; respond- "ent's answer,—we paid you that part in "Argentine in accordance with the law of "that country; libellant's reply the law of the "United States refuses to recognize that law- "ful and completed transaction. For so ex- "treme a doctrine support can be found only "in plain unquestioned legislative order; and "such order cannot be discovered in this "statute."

In the present Act Congress does not undertake to require compliance with the provision in question, in the case of foreign seamen on foreign vessels, as a condition of the entry of such foreign vessels into American ports or their clearance therefrom, so that it is not necessary to consider what would be the effect of so extraordinary a departure from the usual course of international comity.

The construction here contended for by the British authorities, namely, that the Act does not

apply to wages earned by a foreign seaman shipped in a foreign port on a foreign vessel under an express contract for payment only upon completion of the entire voyage is not in any way inconsistent with the language of the Act and is in accord with its purpose as expressed in its title and with the general current of authority.

POINT IV.

If so construed as to be applicable to the case at bar the statute would violate the Constitution of the United States.

If the Act should be construed as contended for by appellant, it would be in conflict with the Constitution of the United States. By constraining the owners of the *Strathearn* to the payment of moneys contrary to the provisions of an express contract valid where made and of the statutes in force at that time and place, it would deprive them of property without due process of law.

If the Act of Congress in question were the Act of a State Legislature it would manifestly be unconstitutional as one "impairing the obligation of contracts" under U. S. Const., Art. 1, § 10. This Constitutional prohibition applies specifically to legislation by the States of the Union and is not in terms applicable to the United States. This Court has held, however, in The Sinking Fund Cases, 99 U. S. 700, at p. 718, that although the United States

> "are not included within the constitutional "prohibition which prevents States from "passing laws impairing the obligation of "contracts, but equally with the States they "are prohibited from depriving persons or "corporations of property without due proc- "ess of law."

It may be that it is within the power of Congress to pass laws impairing the obligation of contracts to the extent of taking away some of the remedies formerly available for their enforcement. In the present legislation this has been done to a certain degree by abolishing the arrest of seamen for desertion and providing for the abrogation of Treaty stipulations for the use of this remedy by foreign ship-masters. It is also possible that this legislation would be effectual to prevent a suit for damages for breach of contract against a seaman who leaves a foreign ship in an American port after a demand for half his wages and refusal of payment.

Upon the construction contended for by libellant, Congress has not merely *taken away a remedy*, but has attempted to *create an enforcible pecuniary liability* in direct contravention of a contract lawful and valid where made, and to release *one* of the parties from his contract. This violates the constitutional prohibition against the deprivation of "property without due process of law" (U. S. Const., Amendment V). *As well might Congress undertake to impose a fine upon a foreign vessel for an act done wholly within a foreign jurisdiction and there recognized as lawful.*

This principle has been very recently expressed by this Court in United States *v.* Freeman, 239 U. S. 117. This was a prosecution for violation of § 240 of the Criminal Code, forbidding the

shipment from any foreign country into any State of intoxicating liquors not properly labelled. The Court held that shipment meant transportation from one locality into another and was

> "essentially a continuing act whose perform-
> "ance is begun when the package is delivered
> "to the carrier and is completed when it
> "reaches its destination;"

and that

> "all will concede that Congress did not intend
> "to do anything so obviously futile as to de-
> "nounce as criminal an act wholly done in a
> "foreign country, such as the delivery to the
> "carrier where the shipment is from a for-
> "eign country into a State."

In like manner it would be "obviously futile" for Congress to attempt to declare illegal a civil contract, made outside of the jurisdiction of the United States by persons owing no allegiance to the United States, and valid where made.

In the case at bar, the contract of employment for an entire voyage being valid where made, and being beyond the power of Congress to abrogate or affect, is a complete defense to this suit. In addition, there has been a forfeiture by desertion, which not only bars this suit, but any suit based upon the original employment.

A "vested right to an existing defence" is property, and hence within the constitutional protection.

> See *Pritchard* vs. *Norton*, 106 U. S. 124, at p. 132.

Legislation which attempts to take away a vested right under a contract not only impairs

the obligation of the contract but is also equivalent to a deprivation of property.

> See *Houston & Texas Central Railway* vs. *Texas*, 170 U. S. 243, 261;
> *Angle* vs. *Chicago, St. Paul &c. R. Co.*, 151 U. S. 1, 19.

The consequences of adopting the unconstitutional construction of the statute sought by libellant would be disastrous. A seaman who is able to collect half his wages under threat of terminating his contract and collecting all by legal process, if his demand for half is not complied with, may easily be tempted, by various easily imaginable considerations, to take half his pay, and then desert his ship and let the other half go, whereas, if confronted with the forfeiture of his wages in full, he would doubtless prefer to complete his term of employment.

Appellant's counsel admitted in his brief in the Circuit Court of Appeals that the construction of the Act which he advocates causes "hundreds of seamen" to demand and get half their pay, and "then desert their ships, taking with them what effects they can."

The Courts of this country should protect the merchant vessels of an allied foreign government against being thus stripped of their crews in American ports and delayed indefinitely while new crews are sought. The express purpose of the Act is to promote the welfare of *American* seamen. Other nations should be allowed to promote the welfare of their own seamen and shipping in such manner as they see fit, so long as their methods do not interfere with the peace and

order of American ports. Moreover, under the proper and constitutional construction of the statute here advocated, the peace and order of American ports will not be endangered by the presence of numbers of deserting seamen, not liable to arrest for such desertion, and difficult to deal with effectually under the American Immigration Laws.

The Act should be given a construction in accordance with the spirit of the United States Constitution and of general international law, and within the proper sphere and jurisdiction of Congress.

It is elementary that where a statute may be so construed as not to contravene the Constitution, such construction should be adopted.

> "In the case of all acts of Congress, such "interpretation ought to be adopted as, with- "out doing violence to the import of the "words used, will bring them into harmony "with the Constitution."
>
> *The Japanese Immigrant Case,* 189 U. S. 86, 101.

> "No canon of construction is better estab- "lished or more universally observed than "this, that if a statute will bear two construc- "tions, one within and the other beyond the "constitutional power of the law-making "body, the courts should adopt that which is "consistent with the Constitution, because it "is to be presumed that the legislature in- "tended to act within the scope of its author- "ity."
>
> *St. Louis S. W. Ry.* vs. *Arkansas,* 235 U. S. 350, 369.

POINT V.

A decision by this Court is needed by reason of the conflicting decisions of the lower Courts.

So far as the precise question here presented is concerned, the Act has not yet been construed by the Circuit Court of Appeals or by this Court, and the decisions of the lower Courts are conflicting.

The reported decisions are as follows:

> *The Jacob N. Haskell,* 235 Fed. Rep. 914, D. C., N. D. Fla., June 21, 1916, Sheppard, D. J.

This dealt with the rights of *American* seamen on a vessel of the United States, and held that such seamen are entitled to payments in port at intervals of five days, but that the Master might at all times retain, to the credit of a seaman, "a sum equal to that which has been paid to him out of the wages earned until the end of the voyage."

> *In re Ivertsen,* 237 Fed. Rep. 498, D. C., N. D. Cal. 2d Div., Sept. 18, 1916, Van Fleet, D. J.

Here the question actually decided was that where a seaman demanded full payment and discharge, without any preliminary demand of one-half, and left the ship on refusal, he became a deserter and forfeited his wages. There was a *dictum,* unnecessary to the decision of the case, and apparently erroneous, that "one-half of the

wages then earned," means one-half of the balance then unpaid.

Clyma vs. *The S. S. Ixion*, 237 Fed. Rep. 142, D. C. W. D. Wash., July 15, 1916.
See *ante*, p. 10.

The London, 238 Fed. Rep. 645, D. C., E. D. Penn., Jan. 9, 1917, Dickinson, D. J., affirmed 241 Fed. 863; C. C. A. 3d Circuit, April 26, 1917.

This laid down the correct rule on the question above mentioned, namely, that the seaman's right is to one-half of the total wages earned, after deducting from such one-half the amount of partial payments already made. In this respect the Court followed the same rule as that set forth in *The Jacob N. Haskell, supra.* Since the libel there involved was dismissed, this case does not adjudicate upon the constitutionality of the Act. The opinion in the Circuit Court of Appeals deals only with the question of computation.

The Strathearn, 239 Fed. Rep. 583, D. C., N. D. Fla., Jany. 2, 1917. Sheppard, D. J.

This was the case at bar in the District Court.

The Imberhorne, 240 Fed. Rep. 830, S. D. Ala., S. Div. Ervin, D. J.

This case held that advances made to seamen in a foreign port, and there lawful, could not be deducted in computing the "one-half of the wages then earned" which might be demandable.

This ruling is contrary to the decision in *The State of Maine*, 22 Fed. 734, *supra*, and to the two

unreported Circuit Court of Appeals decisions quoted *supra* (pp. 17-19), is not required by anything in the language of the statute, ignores the principle that such a prohibition as that against advance payments cannot operate extra-territorially upon foreign nationals, and is thus manifestly incorrect.

It does not appear from the opinion that in the *Imberhorne* case the question of the general application of the Seamen's Act to foreign seamen on foreign vessels was fully presented.

The Meteor, 241 Fed. Rep. 735, D. C. S. D. Ala., May 1, 1917. Ervin, D. J.

The Clematis, 244 Fed. Rep. 484, D. C., E. D. N. Y., Aug. 1, 1917. Chatfield, D. J.

These follow *The London* on the question of the manner of computation.

The Talus, 242 Fed. Rep. 954, D. C. S. D. Ala., May 26, 1917. Ervin, D. J.

The Delagoa, 244 Fed. Rep. 835, D. C., E. D. N. Y., Aug. 1, 1917. Chatfield, D. J.

The Rhine, 224 Fed. Rep. 833, D. C. E. D. N. Y., May 25, 1917. Veeder, D. J.
(In this last case the vessel was American).

These refuse to apply the law of the flag and hold that advances in a foreign port are not to be considered in making up the computation. The nationality of the seamen does not appear from the reports. "*The Talus*" and "*The Rhine*" have both been reversed (see pp. 17, 19, *supra*).

The Belgier, 246 Fed. Rep. 966, D. C., S. D. N. Y., July 13, 1917, A. N. Hand, D. J.

This case held that advances in a foreign port, lawful where made, should be deducted, and that a demand for half wages might be a mere cover for intentional desertion, which would bar recovery.

The questions here presented are entirely open in this Court. The correct pathway was indicated by the District Court when it pointed out that a foreign contract is governed by foreign law, and by the Circuit Court of Appeals in the two unreported cases cited. This Court is asked to follow this path a step further and to declare that the right to demand half wages and terminate the contract on refusal cannot be invoked by a foreign seaman shipped on a foreign vessel in a foreign port, so as to nullify the seaman's contractual obligations and statutory duties, to cripple the merchant marine of one of our Allies, and to impede the prosecution of the war and give aid and comfort to the enemy by interfering with the vital needs of ocean transportation.

Conclusion.

The Court should answer the certified questions by declaring that the Act in question is unconstitutional unless so construed as not to apply to foreign seamen shipped on a foreign vessel in a foreign port, under a contract, valid where made, pro-

viding for payment of wages only upon the completion of the voyage.

Respectfully submitted this 25th day of March, 1918.

FREDERIC R. COUDERT,
Counsel for British Embassy in the United States of America,
Amicus Curiae.

HOWARD THAYER KINGSBURY,
also of Counsel,
2 Rector St., N. Y.

No. 8[illegible]861

Office Supreme Court, U. S.
MAR19 1918
JAMES D. MAHER,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1917.

JOHN DILLON,

Appellant-Petitioner,

against

STRATHEARN STEAMSHIP COMPANY, claimant of the Steamship *Strathearn*,

Appellee-Respondent.

MOTION FOR PREFERENCE.

SILAS B. AXTELL and
W. J. WAUGESPACK,
Attorneys for Petitioner.

The Hecla Press, 37 Warren St., N. Y. Tel. 6290 Barclay.

Supreme Court of the United States

OCTOBER TERM—1917.

JOHN DILLON, Appellant-Petitioner, against STRATHEARN STEAMSHIP COMPANY, claimant of the Steamship *Strathearn*, Appellee-Respondent.	Docket #868.

Sirs:

PLEASE TAKE NOTICE that on Monday the 25 day March, 1918, at the opening of court on that day or as soon thereafter as counsel can be heard, I shall make a motion on the annexed petitions, before the Supreme Court of the United States, that the above entitled cause be advanced and preferred for a hearing at an early date convenient to the court, and I shall then and there ask the court to grant the petitioner such other and further relief in the premises as may be just.

Dated, New York, March 18, 1918.

Yours, etc.,

AND

Attorneys for Petitioner.

32 Broadway,
New York City.

To:

2 Rector Street,
New York City,
Specially appearing on behalf of the
British Vice-Consul at Penascola,
as *amicus curiae*.

Pensacola, Fla.,
Attorneys for the Strathearn S. S. Co.,
claimants of the S. S. *Strathearn*.

Now comes the appellant, John Dillon, by his counsel, Silas Blake Axtell, and moves that the cause be advanced upon the docket of this court, so that it may be heard at an early date.

This is an action for wages and an appeal from a decision of Judge Sheppard, District Judge, in *The Strathearn*, reported 239 F., 585.

Facts.

The libelant, a British subject, shipped at Liverpool, England, on May 8th, 1916, as a carpenter on the *Strathearn*, a British ship, owned by the Strathearn Steamship Company, a corporation organized under the laws of Great Britain. The wages were nine pounds per calendar month, payable at the termination of the voyage.

By the articles, the libelant agreed to serve

> "on a voyage not exceeding three years duration to any ports or places within the limits of seventy-five degrees North and sixty degrees South latitude, commencing at Liverpool—proceeding thence to Newport News, and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom as may may be required by the master."

The *Strathearn* sailed from Liverpool to Newport News, thence to South Amercia, and from South America to Pensacola, where she arrived on July 31st, 1916, at 5 o'clock P. M., loaded with a cargo. She started to discharge her cargo at 7 o'clock A. M., August 1st, libelant being then on board and working.

On the next day libelant left the ship to consult the British consul and on his return he demanded of the master half wages under the Provisions of Section 4530 of the United States Revised Statute as amended by Act of March 4th, 1915. The master refused to comply with his demand, whereupon he left the vessel and filed this libel in which he demands full wages.

As amended, Section 4530 R. S. reads as follows:

> "Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessels, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: Provided, such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled TO FULL PAYMENT OF WAGES EARNED—AND PROVIDED FURTHER, THAT THIS ACTION SHALL APPLY TO SEAMEN ON FOREIGN VESSELS WHILE IN HARBORS OF THE UNITED STATES, AND THE COURTS OF THE UNITED STATES SHALL BE OPEN TO SUCH SEAMEN FOR ITS ENFORCEMENT."

The claimant defended before the Circuit Court of the United States on the three principal grounds:

1st. That the libelant demanded his wages prematurely.

2nd. That the statute was not intended to apply to foreign seamen.

3rd. That if construed, as appellant contends, the statute violates the due process clause of the Constitution of the United States.

This case was argued before the Circuit Court of Appeals, on December 4, 1917, and subsequently the Circuit Court of Appeals, without deciding the first two questions raised, has certified to this court two questions involving the constitutionality of the act.

They are as follows:

1st. Is Section 4530 of the Revised Statute of the United States, as the same was amended by Section 4 of the Act of Congress, approved March 4th, 1915, entitled an act to promote the welfare of American seamen in the merchant marine of the United States, to abolish arrest and imprisonment as a penalty for desertion, and to secure the abrogation of the treaty provisions in relation thereto and to promote safety at sea, violative of the Constitution of the United States?

2nd. Is Section 4530 of the Revised Statutes of the United States, as the same was amended by the last mentioned Act of Congress, approved March 4th, 1915, violative of the Constitution of the United States insofar as it provides "that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open for its enforcement"?

The papers of this case and the questions, I am informed, have been duly filed with the Clerk of the Court, and the case is now on the docket of this court for October, 1918, as case No. 868.

John Dillon, the petitioner, by his attorney, your deponent, prays that a preference be granted to

him, and that this action be advanced to the summary calendar of this court.

Petitioner's application is based on the following grounds:

1st. YOUR PETITIONER IS A WAGE EARNER, AND THIS IS AN ACTION TO RECOVER WAGES.

2nd. BECAUSE THE RIGHTS OF MANY THOUSANDS OF OTHER SEAMEN AND WAGE EARNERS, BOTH ON AMERICAN AND FOREIGN SHIPS, ARE IN DOUBT UNTIL THE QUESTIONS HERE CERTIFIED ARE DECIDED.

3rd. Because the right of Congress, as the law making body of the United States, to prescribe conditions of trade under which foreign vessels can enter ports of the United States in times of peace for purposes of trade is questioned.

It is submitted that the determination of the last proposition named is one of vital importance to the people of the United States.

That American ship owners have found it impossible to build and navigate vessels at a profit in competition with vessels operated under foreign flags, is a matter of common knowledge.

America has been and is a high wage country due to various causes—England, Norway, Sweden, Holland and Germany, have been low wage countries by comparison. Vessels under the flags of any of those countries engaging crews in their own ports by reason of treaty provisions heretofore existing, have been able to keep their crews on board from the beginning to the end of the voyage. Deserting seamen were arrested and put back on board by our

own police, so that foreign vessels could be operated more cheaply than could American vessels.

Section 4530 originally provided that seamen on American vessels could demand and receive "one-third of the wages due" them, and in 1898, the act was amended to read "one-half the wages due." But as the articles of foreign ship owners provided that wages of the crew should not be paid during the voyage, except at the option of the master, Congress, in order not to place American ship owners at a disadvantage, inserted in the amendment of 1898 this—"unless the contrary be expressly stipulated in the contract." The ship owners usually saw to it that it was so stipulated.

By amending Section 4530 in 1915, Congress determined to equalize wages on *American and foreign* ships engaged *in American trade,* by changing the statute to read: "One-half the wages earned," and providing that it should apply to seamen on foreign vessels. The evident intention was to benefit the seamen, but not at the same time to put the American ship owner at a disadvantage—that the experiment has been beneficial to American shipping cannot be doubted.

Now the owners of British ships come into court and allege that the act as to them is unconstitutional because it takes *property without due process.* Obviously the same answer must be given to both questions here certified, if the act is unconstitutional as to foreign vessels, it must likewise be unconstitutional as to domestic ships.

The United States does not recognize property in contracts that are contrary to the declared public policy of this country. Can it be questioned that the contracts here relied on are contrary to the Seamen's Act in this case? The contract provided that

Dillon get no wages until the end of the voyage in England—the Seamen's Act provides that he receive half wages on demand, provided the demand is not made until five days after the commencement of the voyage, and at a loading or discharging port in America. Can it be questioned that the Seamen's Act by Section 4530 creating this right, and by the abrogation of treaties relating to arrest or desertion, determines the public policy of the United States as to these contracts?

The power of Congress to regulate foreign and domestic ships engaged in American trade is questioned. This involves the well established right of the United States to create and maintain a protective tariff—to prevent foreign ships from engaging in coastwise trade, and all sorts of regulations made and enforced for the health and benefit of the people of the United States—quarantine regulations, immigration regulations, etc. (See *The Wildenhuss,* 120 U. S., 1; *The Eudora,* 190 U. S., 172.)

It is urged by the claimant that Section 4530 interferes with the performance of a contract entered into abroad in good faith, which was lawful *where made.*

If this proposition were sustained then any regulation to protect American commerce or the health and morals of the people of the United States, could be set at naught by simply making a contract in a country where such contract *was lawful!* For these reasons a speedy determination to these questions is desirable.

4th. Because these questions INVOLVE A STATUTE OF THE UNITED STATES WHICH IS PART OF A HIGHLY REMEDIAL ACT OF CONGRESS INTENDED TO BENEFIT A

CLASS OF LABORERS WHO HAVE LONG BEEN REGARDED AS WARDS OF THE COURTS.

WHEREFORE, deponent, on behalf of the petitioner, respectfully petitions this court to advance this case to the calendar of summary causes.

Dated, March 18, 1918.

Counsel for Appellant.

Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. [redacted]361

JOHN DILLON

vs.

STRATHEARN STEAMSHIP COMPANY, CLAIMANT OF STEAMSHIP "STRATHEARN."

On a Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

Brief on Behalf of John Dillon, Appellant.

W. J. WAGUESPACK,
Counsel for Libellant,
1406 Whitney-Central Bldg.,
New Orleans, La.

New Orleans, Sept. 10, 1918.

SILAS BLAKE AXTELL,
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AUTHORITIES CITED.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 868

JOHN DILLON

versus

STRATHEARN STEAMSHIP COMPANY, CLAIMANT OF STEAMSHIP "STRATHEARN."

On a Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

Brief on Behalf of John Dillon, Appellant.

The Court of Appeals for the Fifth Circuit has certified these two questions:

First: Is Section 4530 of the Revised Statutes of the United States, as the same was amended by Section 4 of the Act of Congress, approved March 4, 1915, entitled: "An act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to

secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea violative of the Constitution of the United States?"

Second: Is Section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned Act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides: "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the Courts of the United States shall be open to such seamen for its enforcement?"

As amended, Section 4530 of the Revised Statutes of the United States reads as follows:

> "Section 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him as provided in Section forty-five hundred and twenty-nine of the Revised Statutes: Provided further, That notwith-

> standing any release signed by any seaman under Section forty-five hundred and fifty-two of the Revised Statutes any Court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the Courts of the United States shall be open to such seamen for its enforcement."
>
> 38 *Stat. L.*, 1165.

Section 18 of the Seamen's Act of 1915 fixed the date when the act shall take effect and reads as follows:

> "Sec. 18. That this act shall take effect, as to all vessels of the United States, eight months after its passage, and as to foreign vessels twelve months after its passage, except that such parts hereof as are in conflict with articles of any treaty or convention with any foreign nation shall take effect as regards the vessels of such foreign nation on the expiration of the period fixed in the notice of abrogation of the said articles as provided in Section sixteen of this act."
>
> 38 *Stat. L.*, 1185.

On March 31st, 1915, the Attorney General rendered an opinion on the proper construction of this section and reached the conclusion that it was intended that no part of the act should become effective legislation until November 4, 1915, as to United States vessels, and March 4, 1916, as to foreign vessels. *Suppl. Federal Statutes*, 1916, *p.* 250.

STATEMENT OF THE FACTS AND PLEADINGS.

The libellant, John Dillon, a British subject, shipped at Liverpool, England, on May 8th, 1916 as carpenter on the steamship **"Strathearn"** which was then and at the time of the filing of the libel of this case, a vessel of British registry and enrollment, owned by the Strathearn Steamship Company, Ltd., a corporation organized and existing under the laws of Great Britain. By the shipping articles signed by him, Dillon agreed to serve "on a voyage from or not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude, commencing at Liverpool—proceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the master." Dillon's wages were fixed at £9 per calendar month payable at the termination of the voyage.

On that voyage the S. S. **"Strathearn"** sailed from Liverpool to Newport News, thence to a port in South America and from that port in South America to Pensacola, Florida, where she arrived on July 31st, 1916, loaded with a cargo. She started to discharge her cargo at 7 A. M. on August 1st, 1916, libellant being then on board and working.

On the next day, August 2nd, 1916, while the Strathearn was in the port of Pensacola, John Dillon, who was still in the employ of the ship as carpenter, demanded of the master of the ship one-half of the wages he had then earned. The master refused to comply with his demand and no payment was made thereof. Prior to the time of that demand

nothing had been paid to Dillon on his wages since the ship left a port in South America about two months before. At the time the demand was made the amount of wages earned by Dillon, less what had been paid him thereof, was approximately $125.00, no part of which was due under the terms of the shipping articles signed by Dillon which provided that the wages were to be paid at the termination of the voyage.

After the master had refused to comply with Dillon's demand, the latter on the same day filed in the District Court of the United States, this libel in admiralty, against the ship in which he claimed $125.00, the amount of wages alleged to have been earned when the said demand was made and payment refused.

The Strathearn Steamship Company defended, substantially upon the following grounds:

1st. That the Congress of the United States had no jurisdiction and no constitutional right to make laws governing the situation, or in substance that Section 4530 is unconstitutional.

2nd. That libellant demanded his wages prematurely and that the right to demand half wages under the provisions of the act does not arise until five days after the arrival of the vessel and that libellant was, therefore, a deserter and had, under the laws of Great Britain, forfeited his wages.

3rd. That libellant's case does not fall within the provisions of the statute because the statute was not intended to apply to foreign seamen entering into a valid contract in a foreign port and for services on a foreign vessel.

4th. That if construed as appellant contends, the statute violates the due process clause of the Constitution of the United States.

The British Consul at Pensacola, Florida, intervened as *amicus curiae* by direction of the British Ambassador, and asked to be permitted to submit a brief in regard to the construction, application and effect of the provisions of Section 4530 of the Revised Statutes invoked by libellant.

The Court did not pass upon the constitutional point raised by defendant, but **pretermitting** that point the Court dismissed the libel upon the ground that libellant had made his demand for half wages prematurely, construing the statute to mean that the demand for half wages should be made five days after the arrival of the vessel in port and not five days after the commencemnt of the voyage and used the following language:

> "Pretermitting the subject which evoked most of the argument, viz., whether the Seamen's Act would apply to a case where all of the parties to the action are foreigners and under a foreign flag, or the constitutionality of the act, it is certain that the statute applies only to cases embraced by its terms, and that such cases must meet the express requirements of the act to set the remedial provisions into operation."

From that judgment the libellant prosecuted an appeal to the Court of Appeals for the Fifth Circuit and in that Court the questions propounded by the pleadings and argued by counsel on both sides were:

1st. Whether the right granted to "every" seaman to demand half wages at "every" port where the vessel shall load or deliver cargo arises after the expiration of five days, from the commencement of the voyage or after the expiration of five days from the arrival of the vessel in port.

2nd. Whether, under the terms and the language or upon the proper construction of the statute, it does or does not apply to "foreign" seamen shipped in a "foreign" port upon a "foreign" vessel, under an agreement valid where made, whereby such seamen are entitled to payment of their wages until the termination of the voyage whenever such foreign vessels come into our ports to load and deliver cargo and while they remain in the ports of the United States.

3rd. Whether, if construed applicable to "foreign" seamen shipped in a "foreign" port on a "foreign" vessel under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the termination of the voyage, the statute does not exceed the legislative powers of the United States.

4th. Whether, if construed as applicable to the case at bar, the statute violates the constitutional prohibition against the deprivation of property without due process of law.

THE TWO QUESTIONS CERTIFIED.

Reasoning from the two questions certified to this Court, the conclusion is inevitable that the Court of Appeals was satisfied that:

I.

The right to demand half wages arises after the expiration of five days from the **commencement** of the voyage and not five days after the arrival of the vessel in port;

II.

That Section 4530, as amended by the statute in congressional intendment, in terms and by proper construction applies to foreign seamen shipped in a foreign port on a foreign vessel, under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the termination of the voyage, **whenever such foreign vessels come into our ports to load or deliver cargo and while they remain in the harbors of the United States.**

(We reproduce in an appendix the argument submitted in our brief filed in the Court of Appeals on the foregoing points.)

But the Court seems in doubt on these two points:

I.

Whether Congress is vested with the power to regulate the contracts of seamen engaged in interstate commerce so as to confer upon them the right to demand half of their wages in every port where such vessels shall load or deliver cargo, all stipulations in the contract to the contrary notwithstanding, and, upon failure on the part of the master to comply with this demand, to release the seamen from their contract and entitle them to file suit for the full amount of their wages then earned.

Whether, if Congress is vested with the power to so regulate the contracts of seamen, such power extends to the contracts of foreign seamen shipped in a foreign port on a foreign vessel under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the termination of the voyage whenever these foreign vessels come into our ports to load or deliver cargo and while in the harbors of the United States.

ARGUMENT.

FIRST QUESTION.

Is Section 4530 of the Revised Statutes of the United States as the same was amnded by Section 4, of the Act of Congress, approved March 4, 1915, entitled: " An act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea" violative of the Constitution of the United States?

This question is not very explicit but it is obvious that the distinct points or propositions of law which the Court wishes answered are these:

Whether the provisions of the statute regulating the contracts of seamen engaged in interstate and foreign

commerce by conferring upon them the right to demand half of their wages under certain conditions and by avoiding all stipulations to the contrary in their contracts and, upon the failure of the masters to pay, to terminate their contracts and sue for all of their wages then earned, is a valid exercise of the power of Congress to regulate commerce and whether it is not an invasion of the liberty of contract guaranteed by the Fourteenth Amendment of the Constitution.

We think these questions have been fully answered by this Court in the case of *Patterson v. The Eudora*, 190 *U. S.*, 169, 23 *S. C. Rep.*, 821, in which the Court said:

> "Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions for the purpose of securing the full and safe carrying on of commerce on the water. Being so subject, whenever the contract is for employment in commerce, not wholly within the state, legislation enforcing such restrictions comes within the domain of Congress, which is charged with the duty of protecting foreign and interstate commerce."

But, over and above the power of Congress to regulate commerce, the power of Congress to make amendments of the maritime law of the country is co-extensive with that law, so that Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country.

Southern Pacific Co. v. Jensen, 37 *S. C. Rep.*, 524; 244 *U. S.*, 205; *Chelentis v. Luckenbach*, 38 *S. C. Rep.*, 501; *In re Garnett*, 141 *U. S.*, 12; *Butler v. Boston Steamship Co.*, 130 *U. S.*, 527.

Nor is it an invasion of the liberty of contracts guaranteed by the Fourteenth Amendment, for, as was said by this Court in the case of *Patterson v. Eudora*, quoting *Frisbie v. U. S.*, 157 *U. S.*, 160:

> "While it may be conceded that generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that generally speaking, every citizen has a right freely to contract for the price of his labor, service, or property.
>
> * * *
>
> "If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like

> manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation, but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs."

From the title of the act which is to "promote the welfare of American seamen in the merchant marine of the United States", from an analysis of all of its provisions, from its legislative history and the circumstances surrounding its enactment, as exhibited in the public documents, in the records of Congress and the reports of committees, and from a digest of all of said documents as prepared by Andrew Furuseth, President of the International Seamen's Union of America, to which we respectfully refer this Court, the manifest intent and purpose was the public welfare since it was to elevate and better the condition of the seamen, to cause wages to equalize upwards by means of the free operation of the law of supply and demand as to labor, to secure a higher standard or service and thus promote safety at sea and to benefit the American merchant marine by equalizing the costs of operation as between our ships and those of other nations.

Prior to the amendment of Section 4530, under terms of the Act of 1898, the American as well as the foreign ship owners could, as it is manifest, defeat the object of the provision of the statute with reference to the payment of half wages, by stipulations to the contrary in the contract, but, experience had taught that it was necessary to prohibit such stipulations, to strike them with nullitiy, in order to carry out the intent and purpose of the act, the public policy of the United States, and lift up the American seamen from a

condition of bondage unworthy of an American citizen and contrary to the spirit of our institutions.

Gibbons v. Ogden, 9 *Wheaton*, 1; *Champion v. Ames*, 188 *U. S.*, 321; *Johnson v. Southern P. Co.*, 196 *U. S.*, 1.

We do not think, therefore, that there can be any serious contention as to the constitutionality of the statute upon those two points, and we think the first question should be answered "yes."

SECOND QUESTION.

Is Section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned Act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides: "That this section shall apply to seamen on foreign vessels while in harbors of the United States and the Courts of the United States shall be open to such seamen for its enforcement?"

This question more specifically stated is:

In applying the statute to foreign seamen shipped in a foreign port on a foreign vessel under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, whenever such foreign vessels come into our ports to load or deliver cargo and while they remain in our ports, did Congress exceed the legislative power of the United States, and did it violate the constitutional prohibition against the deprivation of property without due process of law?

There is no pretension that Congress, by this statute, could nullify contracts with seamen entered into in a foreign country, which were to be performed wholly on foreign soil or in foreign harbors, but what Congress undertook to do, and did do, was to establish a public policy of the United States with regard to the payment of seamen's wages which was to be binding upon all foreign vessels, whenever they submitted themselves to the jurisdiction of the United States by entering into our ports to load and deliver cargo in foreign commerce and to provide for the enforcement of this public policy whenever an attempt was made to set it at defiance.

Congress has the undoubted legislative power to withdraw its consent to the entry of foreign vessels into the ports of the United States altogether. It can, therefore, impose upon foreign vessels such terms and conditions precedent to their entry as it sees fit. But, by this section of the Act of 1915, Congress has imposed upon every vessel entering our ports to load or deliver cargo, the condition that they shall do what every American vessel is made to do, viz.: pay to seamen upon their demand at stated intervals of time half of their wages then earned. The statute does not attempt to nullify such contracts where the vessels have complied with the public policy of this country by paying the half wages, for upon such compliance the contract remains otherwise in full force. It is only when foreign vessels have set the law and the public policy of the United States at defiance by refusing to pay the half wages, that, by their own infraction of the statute within our own harbors, upon American soil and within the jurisdiction of the United States,

the vessel themselves, under the terms of the statute, terminate the contract, vest the seamen with the right to demand all of their wages then earned and open to them the Courts of the United States for the enforcement of this right, since the seamen themselves are, under the terms of the statute, powerless to terminate the contract and enforce a demand for the full wages then earned when the vessels have complied with the public policy of the United States by paying half of their wages on demand. The provision of the statute with regard to the termination of the contract and the opening of the Courts is thus merely remedial, and it provides a remedy which Congress, in its wisdom and experience, felt was necessary for the enforcement of this public policy of the United States, for by reference to the debates in Congress and the reports of committees it is manifest that this public policy of the United States with reference to American seamen could not possibly be carried out without applying the same provisions of the act to foreign seamen shipped on foreign vessls under contracts made in foreign ports.

The statute, therefore, does not attempt to absolve seamen from the obligation of their contracts made upon foreign soil and valid where made, but it only imposes upon every foreign vessel, as a condition precedent to their entry into our ports, that they shall not violate the public policy of the United States with respect to the payment of seamen's wages; and in order that foreign vessels might have ample time to adjust all matters so as to comply with the condition imposed, Congress provided that, as to them, the statute should not go into effect until twelve months after its passage. Claimant en-

tered, therefore, into the contract at bar with full knowledge and warning as to the requirements of the statute, for the contract is dated May 8, 1916, two months after the statute had gone into effect. Hence there could be, under no circumstances, any right of property vested by that contract which was divested by the statute.

That the imposition of such a condition precedent to the entry of vessels into our ports is within the scope of legislative authority, this Court has clearly demonstrated in *Patterson v. Eudora*, for the Court said:

> "The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which those vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn, it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign, as well as domestic vessels * * * Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the Courts are not at liberty to dispense with. The interests of our own shipping require this. It is well said by counsel for the government in the brief which he was given leave to file:
>
> " 'Moreover, as 90 per cent of all commerce in our ports is conducted in foreign vessels, it must be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtain-

ing their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid; and if, in a large port like New York, 90 per cent of the vessels are permitted to prepay such seamen as ship upon them, and the other 10 per cent, being American vessels cannot thus prepay, it will be exceedingly difficult for American vessels to obtain crews. This practical consideration, presumably appealed to Congress and fully justified the provision herein contained.'

"We are of the opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our Courts are bound to enforce those provisions in respect to foreign, equally with domestic, vessels."

In *Wildenhus's case*, 120 *U. S.*, 1, Chief Justice Waite said:

"It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless, by treaty or otherwise, the two countries have come to some different understanding or agreement."

In *The Exchange v. McFadden*, 7 *Cranch*, 116, Chief Justice Marshall said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute . It is susceptible of no limitation not imposd by itself. Any restriction upon it deriving validity from an external source would imply a diminution of its sovereignty

to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source. This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood not less obligatory', And again, after holding it 'to be a principle of public law that national ships of war entering the port of a friendly power, open for their reception, are to be considered as exempted, by the consent of that power, from its jurisdiction', he added:

"Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction, either by employing force or by subjecting such vessels to the ordinary tribunals."

A distinction is sought to be made by counsl because in the *Eudora case* the advance of wages to seamen was effected in the harbor of New York, whereas the shipping articles in the case at bar were signed in Liverpool. The fundamental principle involved, however, is the same and while it may be true as a general rule that the *lex loci* governs and it is also true that the intention of the parties to a contract will be sought out and enforced, both of these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by will of contracting parties can the public policy of a country be set at naught.

Story, Confl. of Laws, Secs. 38, 244, *The Kensington*, 188 *U. S.*, 263.

In *The Kensington*, where a contract had been entered into in Belgium and it was stipulated that "All questions arising hereunder are to be settled according to the Belgium law with reference to which this contract is made", it was insisted that the law of Belgium should be applied and it was shown that the law of Belgium authorized the conditions. This Court said:

> "The contention amounts to this: Where a contract is made in a foreign country to be executed at least in part in the United States, the law of the foreign country either by its own enforcement or in virtue of the agreement of the contracting parties, must be enforced by the Courts of the United States even although to do so requires the violation of the pubilc policy of the United States. To state the proposition is, we think, to answer it. It is true, as a general rule, that the *lex loci* governs, and it is also true that the intention of the parties to a contract will be sought out and enforced. But both these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of contracting parties can the public policy of a country be set at naught.
>
> *Story, Confl. L., Secs.* 38, 244.
>
> "While, as said in *Knott v. Botany Worsted Mills*, the previous decisions of this Court have not called for the application of the rule of public policy to the precise question here arising, nevertheless, that it must be here enforced is substantially determined by the previous adjudications of this Court. In *Liverpool & G. W. Steam Co. v. Phoenix Ins. Co.*, 129 *U. S.*, 397, 32 *L. Ed.*, 788, 9 *Sup. Ct. Rep.*, 469, the

question arose whether conditions exempting a carrier from responsibility for loss caused by the neglect of himself or his servants could be enforced in the Courts of the United States, the bill of lading having been issued in New York by a British ship for goods consigned to England. Despite the fact that conditions exempting from responsibility for loss arising from negligence were valid by the laws of New York, and would have been upheld in the Courts of that State, it was decided that, in view of the rule of public policy applied by the Courts of the United States, effect would not be given to the conditions. In the very nature of things, the premise, upon which this decision must rest, is controlling here unless it be said that a contract made in a foreign country, to be executed in part in the United States, is more potential to overthrow the public policy, enforced in the Courts of the United States, than would be a similar contract validly made, in one of the States of the Union. Nor is the suggestion that because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States. In *The Guildhall*, 58 *Fed.*, 796, it was held that a stipulation in a bill of lading issued at Rotterdam on goods destined to New York, exempting the carrier from liability for negligence, would not be enforced in the Courts of the United States, although such a condition was valid under the law of Holland, in *The Glenmavis*, 69 *Fed.*,

472 the same rule was applied to a bill of lading issued in Germany by a British ship, for goods consigned to Philadelphia."

The public policy of the government is to be found in its statutes, and when the lawmaking power speaks upon a particular subject over which it has constitutional power to legislate, public policy in such a case in what the statute enacts.

United States v. Trans. Mo. Freight Association, 116 *U. S.*, 290.

The statute as applied to foreign seamen on foreign vessels shipped in foreign ports under a contract valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, whenever these vessels enter our ports to load or deliver cargo and while in the harbors of the United States, is therefore clearly within the legislative powers of the United States and does not violate the constitutional provisions against the deprivation of property without due process.

We respectfully submit, therefore, that both questions should be answered "yes."

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APPENDIX

Argument of counsel for libellant on Points One and Two in brief filed in the Circuit Court of Appeals:

"POINT I.

"The right granted to every seaman to demand half wages at every port where the vessel shall load or deliver cargo arises after the expiration of five days to be computed from the *commencement* of the voyage and not after the expiration of five days from the arrival of the vessel in port.

"The language of the statute with respect to the time when the five days shall commence to run is, we think, free from ambiguity; the intent to make the five days run from the commncement of the voyage and not from the arrival of the vessel in ports, is, we think, plain. There is, therefore, nothing left for construction for the province of construction lies wholly within the domain of ambiguity.

"*Encyclopedia United States Supreme Court Reporter Vol. II. p.* 110.

"The Court *a qua* stands alone in the contention that the five days must be computed from the arrival of the vessel in port. Judge Ervin in *The Talus* and in *The Imberhorne* and Judge Chattfield in *The Delagoa* take the opposite view, and while the District Courts in all of the other cases reported in Federal Reporters, viz: *The Ixion, The Iverston, The Meteor, The London* and *The Westmeath* did not discuss this question, the decision in every case indicates clearly that the Court felt that the language of the statute

was free from ambiguity and that the five days were to be computed from the commencement of the voyage.

"The manifest intention and purpose of the law was to include within its beneficial provisions **'every'** seaman on vessels which would load or deliver cargo at **'every'** port of the United States, for the language of the statute is **'every seaman** on board, etc.,' and in **'every port** where the vessel shall load or deliver cargo."

"Now, it is elementary that **'every'** part of a statute must be construed with reference to **'every'** other part and every word and phrase in connection with its context, and that that construction must be sought which will give effect to its every word though ambiguous.

"Encyclopedia United States Supreme Court Reporter, Vol. II., p. 119.
"United States v. Gooding, 12 *Wheaton,* 460.
"Bend v. Holt, 13 *Peters,* 263.
"Blair v. Chicago, 201 *U. S.,* 400.
"Vanderbilt v. Eidman, 196 *U. S.,* 480.

"It is also elementary that a statute must be given that construction which will carry into effect the intention, purpose and object of the legislator and must not be construed so as to defeat its object.

"Encyclopedia United States Supreme Court Reporter, Vol. II., p. 118.
"Platt v. Union Pacific R. R. Co., 99 *U. S.,* 48.
"Studebaker v. Perry, 184 *U S.,* 258.
"United States v. Jonas, 19 *Wallace,* 598.

"But the construction placed upon this statute by the Judge *a quo* divides the seaman into two classes;

one class composed of seamen on vessels which shall remain in port less than five days which it eliminates entirely from the benefits of the statute and the other class composed of seamen on vessels which remain in port longer than five days, which alone it includes. And even as to the latter class that construction renders the provision in a great measure nugatory, because, while the purpose which Congress had in view in conferring upon the seamen the privilege of receiving their wages at **'every'** port was that they might use same while in port, that construction allows them half-wages, when they are about to depart from the port. Hence, such a construction clearly defeats the object which Congress had in view not only by eliminating one class entirely but by reducing the other class to a minimum.

"The construction of the statute which computes the five days from the commencement of the voyage on the other hand, extends its benefits to **'every'** seaman in **'every'** port, the only restriction being that he should receive his wages only five days after the commencement of the voyage and not sooner than five days after the last payment, which carries out fully the purpose of the statute.

"POINT II.

"Under the language or upon a proper construction of the statute it applies to foreign seamen shipped in a foreign port on a foreign vessel, under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage.

"The words **'that this section shall apply to seamen on foreign vessels while in harbors of the**

United States', when analized clearly indicates the intention of Congress that the generic term **'seamen'** should include both **'foreign'** and **'American'** seamen.

"It is obvious that Congress could not have used the adjective **'foreign'** so as to read **'foreign seamen on foreign vessels'** because Congress would have thereby excluded **'American'** seamen on **'foreign'** vessels which it clearly did not intend to do.

"Had Congress prefixed the word **'American' so as** to read **'American seamen on foreign vessels'**, Congress would have excluded **'foreign'** seamen on **'foreign'** vessels, but it clearly did not intend to do so, for, intending to include **'foreign'** seamen on **'foreign'** vessels, Congress made use of the generic term **'seamen'** which embraces **'foreign'** as well as **'American'** seamen. That that was Congress' intention is clearly manifested and confirmed by the **sentence** which immediately follows:

"And the Courts of the United States shall be open to such seamen for its enforcement",—and without cost to foreign seamen. *Act of July* 1*st*, 1916; *The Memphia*, 245 *Fed.*, 484.

"There would have been no necessity for this last clause if the intention of Congress had not been to include **'foreign'** seamen under the generic term **'seamen'**; that provision became necessary because without it the Courts would not have been open to **'foreign'** seamen who were compelled before the Statute of 1915 to obtain the consent of the consuls of their country as a condition precedent to the taking of jurisdiction by the United States Court.

"Sections 16 and 17 of the Act contain moreover, a full confirmation of the intent to include **'foreign'**

seamen on **'foreign'** vessels, for to carry out the provisions of the statute with respect to **'foreign'** seamen on **'foreign'** vessels, and in order that foreign seamen on **'foreign'** vessels might be released from their obligations under their contracts and might leave the service of the vessel without fear of being arrested and imprisoned as deserters, Congress enacted that the treaties between the United States and foreign countries which provided for the arrest and imprisonment of foreign seamen deserting from foreign vessels should be terminated; and to further carry out this purpose it repealed Section 5280 and so much of Section 4081 of the Revised Statutes, as related to the arrest and imprisonment of foreign seamen deserting or charged with desertion on merchant vessels of foreign nations in the United States.

"*R. S.*, 5280, 4081.

"It is evident, therefore, that Congress clearly intended that the statute should apply to **'foreign'** seamen on **'foreign'** vessels because it removed every obstacle which might interfere with their right to be released from their contract with impunity and to invoke the aid of the United States Courts to enforce payment of their wages in full upon the refusal of the master to comply with their demand.

"In reply to that part of counsel's argument founded upon the language of the title of the act, it might be sufficient to say that the title of an act 'may not be used to add or take away from the body of the statute', and that where the intent is so clearly and forcibly expressed, as it is here, it should not be considered at all; but the very title of the act indicates that Congress intended, by using the generic term **'seamen'**, to include foreign seamen for the

very reason that it is an "act to promote the welfare of **'American'** seamen.

"It is obvious that the welfare of **'American'** seamen cannot be successfully promoted even under the beneficial provisions of the Statute unless the same privilege is extended to **'foreign'** seamen on **'foreign'** vessels, because under low-wage contracts providing for an unreasonably extended term of payment, seamen are reduced to the condition of involuntary servitude and come into competition with **'American'** seamen in **'American'** ports in foreign commerce.

"By what rule of economics, therefore, could **'American'** seamen on **'American'** vessels or on **'foreign'** vessels derive any advantage from the application of the statute without at the same time applying it to **'foreign'** seamen on **'foreign'** vessels? Hence, it became necessary for the purpose of promoting the welfare of **'American'** seamen to extend to foreign seamen also the privilege of the statute."

* * *

"Respectfully submitted,

"W. J. WAGUESPACK,

"HERBERT W. WAGUESPACK."

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 361

JOHN DILLON,

Appellant,

versus

STRATHEARN STEAMSHIP COMPANY, CLAIMANT OF STEAMSHIP "STRATHEARN."

On a Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

Reply to Brief of Counsel for British Embassay.

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POINT ONE.

The questions before the Court relate only to the constitutionality of the statute, and not at all to its construction.

It is manifest that the Court of Appeals was convinced that Section 4 of the statute applies to foreign seamen shipped on foreign vessels in foreign ports, and that, therefore, it desired no instruction upon the construction of the statute in that respect. The evidence of this conviction is found in the second question propounded, otherwise the question would be frivolous.

The cases of *Billings v. United States*, 232 *U. S.*, 261, and *Towne v. Eisner*, 245 *U. S.*, 418, 425, were brought up to this Court by writs of error, and, although there was also a question certified in *Billings v. United States*, it was by reason of the writ of error that the Court was vested with jurisdiction to review the whole case, and not at all by reason of the certification, for the power of the Supreme Court of the United States to review the proceedings of a Circuit Court in a case brought up on a certificate of division is strictly confined to the questions cited in the certificate. Matters not so certified are not before the Court for its consideration, but remain in the Court below to be determined by the Circuit Court, for your Honors have held that:

> "The power of the Supreme Court of the United States to revise the proceedings of a Circuit Court in a case brought up on a certificate of division is strictly confined to the questions cited in the certificates. Matters not so certified are not before the Court for its consideration, but remain in the Court below to be determined by the Circuit Judges."
>
> *Ogle v. Lee*, 2 *Cranch*, 33.
>
> *Wayman v. Southard*, 10 *Wheaton*, 11.

United States v. Ambrose, 108 *U. S.*, 336.
United States v. Briggs, 5 *Howard*, 208.
Dennistoun v. Stewart, 18 *Howard*, 565.
Jahn v. The Folmina, 212 *U. S.*, 354.
Chicago, B. & Q. R. R. Co. v. Williams, 214 *U. S.*, 492.
Stratton's Independence v. Howbert, 231 *U. S.*, 399.

The Court, however, may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought here for review by writ of error or appeal.

Section 239, Judicial Code.

The Court, therefore, can decide the whole matter and controversy only after it has required the whole record to be sent up to it for consideration.

POINT TWO.

But if the Court shall consider the construction of Section 4 of the statute, it is patent that it applies to foreign seamen shipped in a foreign port on a foreign vessel.

The legislative history of the statute shows beyond a doubt that it applies to foreign seamen shipped in a foreign port on a foreign vessel. (See brief of Attorney-General, pp. 11-23.)

Counsel says, in substance, that the word **"foreign"** was not used to qualify **"seamen"**; but it is patent that there is

no other word that Congress could have used to include both American and foreign seamen except the generic word **"seamen"**; and, besides, the provision in the act which reads:

> "And the Courts of the United States shall be open to such seamen for its enforcement," * * *

would otherwise be nugatory. (See pp. 25, 26, 27, 28, of libellant's brief, Appendix.)

All the decisions of all the Federal Courts, District and Circuit, without excepting this case (else the Court would not have considered the provision as to the five days), have proceeded upon the theory that the law applied to foreign seamen shipped in a foreign port upon a foreign vessel, and no other construction was ever placed upon the statute by any of the said Courts, not even in *Clyman v. The Ixion*, 237 *Fed.*, 142, if that decision be read in full. (See cases cited in brief of British Embassy on pp. 25, 26, 27, 28.)

Even in *McDonald v. Sandberg*, from which the learned counsel for the British Embassy quoted so extensively, the Court of Appeals for the Fifth Circuit, the very same Court which certified the question now under discussion, came to the conclusion that the law applied to a foreign seaman shipped in a foreign port on a foreign vessel, because it said:

> "The abrogation of existing treaties was necessary, though the scope of the act was confined to advances made in American ports, both for the purpose of transferring wage disputes on foreign vessels to the Courts of the United States from the Consular Courts of the treaty nations, as provided for

> in Section 4 of the act, and to enable the provisions of the law with regard to arrests for desertion to be executed without conflicting with existing treaties."

And the Court, therefore, proceeded to the consideration of the question whether advances made in a foreign port by a foreign vessel should be deducted, which the Court could not have done if it had not concluded that Section 4 applied to the facts of that case.

POINTS THREE AND FOUR.

The statute does not exceed the legislative power of the United States, and does not violate the Constitution of the United States as divesting a vested right.

There is no controversy as to whether the United States has extraterritorial jurisdiction. But conceding that Congress has no extraterritorial jurisdiction, still the law imposes a condition of entry into the ports of the United States; and, as Congress can exclude all foreign ships altogether, it has the power to impose whatever condition it sees fit from considerations of public policy without violating the due process clause of the Constitution.

Oceanic Steamship Navigation Co. v. Stranahan, 214 *U. S.*, 320.

U. S., ex rel. Turner, v. Williams, 194 *U. S.*, 279.

Buttfield v. Stranahan, 192 *U. S.*, 470.

Defendant, moreover, entered into the contract at bar with full knowledge and full warning of the condition imposed

upon its entry into our ports, and by entering into our ports accepted this condition, and could not therefore under any circumstances be divested of any vested right.

POINT FIVE.

By reference to all of the cases cited by learned counsel for the British Embassy on pages 25, 26 and 27 of his brief, in which foreign seamen, shipped on foreign vessels in foreign ports, were libellants, the Court took the position that Section 4 of the statute applied, and there is not a single case on record where the Court took a contrary view.

We respectfully submit, therefore, that both questions should be answered "Yes."

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[redacted]

Supreme Court of the United States

[redacted]

Supreme Court of the United States.

OCTOBER TERM—1917.

JOHN DILLON, Appellant, vs. STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "STRATHEARN", Appellee.	No. 868.

Brief on Behalf of the Strathearn Steamship Company, Claimant of Steamship "Strathearn", Appellee.

Statement of Facts.

This case comes before this Court on certification by the Circuit Court of Appeals for the Fifth Circuit of two questions of law, relating to the "Seamen's Act" of March 4th, 1915, commonly known as the "La Follette Act". These questions may be briefly stated as follows:

1. Is §4530 of the United States Revised Statutes, as amended by the "Seamen's Act", constitutional?

2. Is such section constitutional as applied to "seamen on foreign vessels while in harbors of the United States?"

For the information of this Court, the entire Record has been certified to it. Where the Record is referred to in this brief the paging of the Record in the Circuit Court of Appeals is intended.

The suit was brought in the District Court of the United States for the Northern District of Florida and resulted in a dismissal of the libel (The Strathearn, 239 Fed. Rep., 583).

John Dillon, a British subject, shipped as carpenter on board the British Steamship "Strathearn" at Liverpool, on May 8th, 1916. By the shipping articles which he executed at that time, it appears (Transcript of Record, page 16) that Dillon agreed:

> "to serve on board the said ship * * * on a voyage from of not exceeding three years' duration to any port or places within the limits of 75° North and 60° South latitude commencing at Liverpool, proceeding thence to Newport News and/or any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom as may be required by the Master."

The articles contain among other agreements the following:

> "No cash shall be advanced abroad or liberty granted other than at the pleasure of the Master."

The "Strathearn" proceeded to Newport News, thence to South America, and from there to

Pensacola, Florida, arriving at Pensacola on the afternoon of July 31st, 1916. John Dillon worked throughout the following day, August 1st, but according to the master's testimony (McKenzie's testimony, page 24) and his own admission (Dillon's testimony, page 44), he left the vessel without permission on the morning of August 2nd and remained away all day. Before leaving the vessel Dillon made some complaint to the Master as to working conditions, and left to see the British Counsul about this difficulty (Dillion's testimony, page 45). While ashore he called on a lawyer and was advised concerning the Seamen's Act and returned to the ship and demanded half wages under its alleged terms, and, upon being refused, at once brought this libel.

It appears that after his libel was filed Dillon worked from time to time upon the vessel while it was in port at Pensacola. That he was in some doubt as to his status as a seaman on the ship appears from his direct examination (Transcript of Record, page 43), and from his redirect examination by his own counsel (Transcript of Record, page 48) where he testifies as follows:

> "Q. I believe you said that you did that simply to have a place to get food and sleep, and you are expecting no pay for it? A. I leave that to your advice."

It is not intended in this memorandum to repeat the argument in the Brief of the Counsel for the British Embassy made on behalf of Appellee, and this Brief is more especially directed towards certain suggestions of the Appellant.

POINT I.

The libelant's case does not fall within the provisions of the statute in question because it was not intended to apply to a foreign seamen entering into a valid contract in a foreign port for service on a foreign vessel.

The portion of the statute here to be discussed is the last proviso of the section in question which is as follows:

> "And, provided further that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This proviso does not in terms apply to foreign seamen. The purpose of the Act may be fulfilled without broadening its meaning to include all foreign seamen. It is "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest, and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea". The title may be looked to as an aid in the construction of an act and it indicates that Congress had in view American seamen only (See cases cited Brief for British Embassy).

If the scope of the Act is so broadened by this proviso as to include this libellant, that is, a

British seaman serving on a British vessel under a contract with another British subject made in Great Britain, it is necessary to impute to Congress an intention to enact legislation having force beyond the territory of the United States; to interfere with friendly foreigners by destroying the contracts which they have made between themselves at home merely because their ships visit our ports; and to interfere with and attempt to control the relations between the subjects of a foreign friendly power aboard their own ships while they are temporarily in American waters. The language of the proviso does not require such a construction. It may readily be so construed as to avoid such results by excluding from its operation foreign seamen on foreign vessels under agreements made in foreign countries.

The Appellee contends that the object of Congress was to make the seamen a "free man". "He must be within his right, if he chooses to leave the vessel in any safe place, and he must have the right to draw at least half of the wages due him in any harbor". * * * The seaman's physical needs would hold him in the vessel with a stronger grip than the threat of imprisonment" (American Seaman by Hon. John E. Raker, p. 13). In American Sea Power and The Seaman's Act by Andrew Furuseth, p. 21 quoting from the report of the Legal Aid Society "As a rule, seaman on foreign ships demand one-half their wages and then quit. The result is, the foreign ships' master must refurnish his vessel with a crew before leaving".

In simple words it is contended that the object of Congress was to encourage desertion

from foreign vessels, not to promote the welfare of American seamen.

These principles are much too short sighted even to be accepted as American principles—they savor Bolshevism and like such principles fail to accomplish their object. Under British law the breach of a seaman's contract is desertion and the punishment for desertion is imprisonment. What avail is it for a British seaman to desert and to ship on an American vessel with higher wages and when he arrives in a British port to be imprisoned.

If "crimping" is what is sought to be abolished let it be frankly and energetically accomplished.

The argument further implies that it was the will of Congress to impose its standards not only on behalf of American Seamen but all seamen American or foreign. Fundamentally and radically the argument is at variance with the first principles of our Republic and is an attempt to violate the principles of the sovereignty of each nation and the comity of nations.

> "It is believed to be an accepted doctrine that the right of a vessel to be governed in respect of her internal discipline by the laws and regulations of her own country is not forfeited by her entrance into the port of foreign country"

(Moore International Law Digest, Vol. II, p. 335, quoting from Mr. Fish, Secretary of State).

> "And so by comity it came to be generally understood among civilized nations, that all matters of discipline and all things done on board which affected only the vessel or

> those belonging to her * * * should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation, or the interests of its commence should require" Wildenhus's Case, 120 U. S. 1.

If the indirect object of the act, is to cause desertion among British seaman it has undoubtedly accomplished its object. It has been notorious that British ships have been detained in the ports of the United States because their crews have deserted just before sailing. This surely is unfriendly to an ally upon whose vessels at least half of the United States Army has been transported to France.

It is wholly inconsistent for this court to construe this act and the effect of the previous acts of Congress to be that American seamen are subject to American law not only in our own ports but in foreign ports, and at the same time to hold that foreign seamen on foreign vessels shipped in foreign ports are subject to their own law in foreign ports but are subject to American law when at our ports. It is seeking to impose our own conceptions of the rights of seamen upon the whole world in violation of the comity of nations.

POINT II.

If construed as appellant contends, this statute violates the due prcoess of law clause of the constitution of the United States.

Construed in accordance with libelant's contention this Act would give him wages to which he is not of right entitled under his contract; these same wages it would take from the ship; it would deprive the ship of libelant's services to which, under their contract, it is entitled; and it would take from the ship a right to defend an action brought by the seaman for wages which under his contract he has not yet earned and to which he is not entitled.

It is plain that at the time and place the shipping articles of the "Strathearn" were executed, the parties to them were not amenable to this Act of Congress. It could in no way be imported into their contract, nor could their contract have been made in contemplation of it. If its provisions have attached to them and to their contract at any time, it was only at the time the "Strathearn" entered a port of the United States. Immediately before that point of time the owners of the ship and the libelants were mutually bound by the terms of their contract. The owners had the right to require the complete performance of it to the end, and had the right to defend such an action as this libel by pleading the contract. Plainly these rights are to be regarded as property, and at the moment of the arrival of the ship in an Ameri-

can port, the Act of Congress, as the libelants would construe it, would have the effect of taking from the owners of the "Strathearn" this property at one stroke. Such a taking of property is prohibited by the Constitution of the United States, and if this statute is given the construction contended for by libelant, it is in violation of the Constitution of the United States and void.

The argument in the Brief of the Appellant that the effect of the statute is "merely remedial" in opening the Courts of this country to foreign seamen is contrary to the statements (cited supra) and to the statute itself. Properly, Congress has refused the forums, provided for the enforcement of its law, to the enforcement of remedies which are contrary to its public policy (such as imprisonment for desertion) and has made it illegal to enter into a contract contrary to its law within its jurisdiction (The Eudora, 190 U. S., 169), but it is radically different to open its forums not for the enforcement of its law but for the avowed purpose of interfering with and rendering void the contracts, laws and regulations of a friendly power.

The argument of the appellant (derived chiefly from the Kensington, 183 U. S., 263, and the cases referred to in that opinion) that the place of performance governs the interpretation of the contract and that a stipulation in the contract whereby the parties seek to avoid the public policy of the place of performance will be held void loses sight of the fact that the cases are confined to a contract made in a foreign country to forward merchandise to the United States. The cases of *United States* vs. *Chavez*, 228 U. S., 525 and the *United States* vs. *Freeman*, 239 U.

S., 117, are cases where Congress undertook to control actions to be performed in the United States.

In the instant case it cannot be held that the law of the place of performance is the law of the United States for the reason that the place of performance was not the United States. The place of performance was the Strathearn, a British ship, and although she was not immune from process while in the ports in the United States, still she did not cease to be British. While amenable to the police power of the United States and of its several states "her discipline and all things done on board which affected only the vessel or those belonging to her" must be dealt with according to British law. The agreement to pay the seamen's wages was not to be performed in the United States—the wages were to be paid only upon the return of the vessel to a port in the United Kingdom except as the Master might voluntarily make prior payments.

The temporary stay in a port of the United States cannot be held to take away the right of the owner to the security, which he held for the performance of the seamen's contract, by giving the seaman a right to the payment one half of such security upon demand.

It is respectfully submitted that the questions should be answered in the affirmative unless the act be construed unapplicable to a foreign seaman shipped on a foreign vessel outside of the United States.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF THE UNITED STATES AS AMICUS CURIÆ.

STATEMENT OF THE CASE.

The above-styled cases involve the validity of vital sections of the Seamen's Act of March 4, 1915, c. 153, 38 Stat. 1165, 1167, 1168, sections 4 and 11. The main question is whether, in an effort to aid the national merchant marine, such conditions as are fixed by sections 4 and 11 may be validly imposed to the entrance of foreign vessels into American ports. On account of the national interest in the development of the American merchant marine the United States files this brief as *amicus curiae* in accordance with leave obtained.

THE STATUTE.

Sections 4 and 11 of the Seamen's Act are as follows:

> SEC. 4. That section forty-five hundred and thirty of the Revised Statutes of the United States be, and is hereby, amended to read as follows:
>
> "SEC. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the

seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

SEC. 11. That section twenty-four of the Act entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce," approved December twenty-first, eighteen hundred and ninety-eight, be, and is hereby, amended to read as follows:

"SEC. 24. That section ten of chapter one hundred and twenty-one of the laws of eighteen hundred and eighty-four, as amended by section three of chapter four hundred and twenty-one of the laws of eighteen hundred and eighty-six, be, and is hereby, amended to read as follows:

"'SEC. 10. (a) That it shall be, and is hereby, made unlawful in any case to pay any sea-

man wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

* * * * *

"'(e) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions

shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"'The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.'"

THE FACTS.

The Strathearn, No. 361. Dillon, a British subject, shipped at Liverpool on a ship of British registry on May 8, 1916. The shipping articles, signed at Liverpool, provided for a journey to Newport News and other ports, to end at the United Kingdom. So far as appears from the certificate, no place or time of payment of wages was specified. The agreement was valid according to the laws of Great Britain (Certificate, p. 1).

On arrival of the ship in Florida, after demand and refusal, this libel was filed for one-half of the wages earned. The District Court dismissed the libel (239 Fed. 583). On appeal to the Circuit Court of Appeals for the Fifth Circuit two questions are certified to this court. These are: (1) Is section 4 of the Seamen's Act constitutional? (2) Is the section valid in so far as it provides: "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement"?

The Talus, No. 392. This was also a libel under section 4 for one-half wages earned. Here, however, an advance was made abroad. Libellants, British subjects, at Liverpool, in November, 1916, signed shipping articles for a voyage on a British ship. Money was advanced to libellants in Liverpool before they boarded ship to such an amount that, if taken together with certain undisputed credits, more than one-half of the total wages then earned had been paid at the time of the demand, refusal, and libel. If the advance is not to be counted, one-half the wages had not been paid (R. 19, 20). It is lawful and customary to make such advances in Great Britain. The ship entered the port of Mobile, Alabama, in February, 1917.

The District Court held that under sections 4 and 11 of the Seamen's Act the money advanced prior to the earning of any wages could not be claimed as a credit in a suit in our courts. And it held the sections constitutional. R. 10 *et seq.*; 242 Fed. 954. The Circuit Court of Appeals for the Fifth Circuit took the ground that section 11 attached criminal penalties coextensive with the civil provisions and could not be presumed to apply to an advance made in a foreign country, lawful where made. It therefore reversed the decree below. 248 Fed. 670. The case is here on certiorari.

The Rhine, No. 393, and *The Windrush*, No. 394. In these cases the sole question is as to the validity, under sec. 11, of advances paid to a crimp by American vessels in foreign ports. The two cases present

very similar facts and were submitted together in the lower courts. Page references herein are to the record in number 394.

In May, 1916, libellant seamen signed shipping articles before the American vice consul at Buenos Aires, Argentine, for a voyage to the United States (R. 16). The ship had American registry. At the time each of the libellants also signed a receipt or order for a month's wages, in most instances $25. In no instance did the seamen receive the money so "advanced" and the libels are brought to recover the amounts.

The "advances" were all paid to one Tommy Moore. Some of the libellants owed Moore a dollar or two for board and lodging (R. 8, 26). Others owed him nothing (R. 18, 22, 33, 38), but signed the receipt under the following circumstances:

Udson applied to the master of the *Windrush* for employment, and was told he would have to go to Tommy Moore (see R. 35). He reported to Moore saying, "The captain sent me here." Moore replied, "All right; you belong to the crew then" (R. 21).

Robur asked the master for a job and was told "go to Tommy Moore" (R. 37).

Goldstein, the cook, was employed by the mate of the *Windrush* some weeks before she left port. Each week Moore came on board, paid Goldstein part of his weekly wages and retained a balance (R. 25, 26). Goldstein had to sign the "advance" order or Moore would not have let him sail (R. 28).

It was stipulated below that the master, if called, would testify that the American Vice Consul instructed him, in the presence of the libellants, to honor the receipts in favor of Moore; and "that said master would testify that he (the master) received neither directly nor indirectly any part of said advances."

The seamen were citizens of the United States and of foreign nations (R. 8, 16, 20, 28). It was stipulated that the Consular Regulations provide: "The provision of the statute as to payment of advance wages is not intended to apply to seamen shipped in foreign ports" (R. 7). The date of these regulations is not shown by the record.

In the District Court, decree was entered for the libellants (R. 40; 244 Fed. 833). Judgment was reversed by the Circuit Court of Appeals for the Second Circuit, Learned Hand, J., dissenting (250 Fed. 180). The grounds of the decision were mainly (1) that prior judicial and departmental construction of the language was adopted by Congress, and (2) that the imposition of the criminal penalty showed an intent to restrict the application of the statute to acts done in the United States. The cases are here on certiorari.

CONTENTIONS OF THE PARTIES.

The argument against the validity of section 4 in the case of the *Strathearn* may be stated as follows: The seaman's contract made abroad, and valid where made, does not provide for payment of any wages

in the ports of the United States. Presumptively, therefore, payment is to be made at the home port upon return. If part wages must be paid in ports of the United States, the owner of the vessel is deprived of property without due process of law.

In answer, it is urged that the statute manifests a public policy dictated by high national interests, and carries a direction to our courts not to recognize or enforce contracts not consistent with that policy; that the statute imposes upon the entry into American ports of foreign merchant vessels the condition that they consent to pay their seamen one-half the wages earned; that the condition is valid, as an exercise of sovereignty in the regulation of foreign trade.

In the case of The *Talus*, involving section 11, the contention as to deprivation of property rights is reinforced by the element that in part performance of the foreign contract certain moneys were advanced to the seamen.

To this contention like answer is made.

As to the interpretation of section 11, to the contention that the imposition of criminal penalties shows an intent to limit the operation of the act to United States territory, it is answered (1) that the criminal remedy is separable and that a separate provision of the section covers libels for wages, which is unnecessary if the criminal and civil provisions were designed only to be coextensive; (2) that the project to assist the decadent American merchant marine, the prime purpose of the Seamen's Act, is

thwarted unless such foreign advances may be disregarded in civil suits; and (3) that the rejection of amendments designed to limit the section to advances made in this country shows the precise intent.

With respect to the advances made abroad by masters of American vessels, in the cases of the *Rhine* and *Windrush*, it is contended that such advances were intended to stand on the same footing as advances by foreign vessels which should enter our ports; that as to contracts of employment of American seamen, questions of validity as well as of enforcement in the forum are to be determined by American standards. The holding of the court below, that an inconsistent prior executive and judicial construction was adopted by the legislature is, we say, contrary to the prime purpose of the act and is negatived by the language used by Congress in amending the former statute.

The issues are made up by the meeting of the respective contentions outlined.

ARGUMENT.

THE STRATHEARN.

I.

Section 4 applies to foreign contracts of employment of foreign seamen on foreign ships and is constitutional.

1. The evil sought to be remedied was the handicap of higher wage cost under which the then decadent American merchant marine was laboring.

Resuscitation of the languishing national merchant marine had long been a public demand. In his annual message to Congress of December 7, 1903, the President urged the appointment of a commission to investigate and report "what legislation is desirable or necessary for the development of the American merchant marine and American commerce, and incidentally of a national ocean mail service of adequate auxiliary naval cruisers and naval reserves." The Merchant Marine Commission was created by act of April 28, 1904, c. 1813, 33 Stat. 561, which held elaborate investigations and reported to Congress January 4, 1905 (39 Cong. Rec. part 1, pp. 437–439; S. Rept. No. 2755, 58th Cong. 3d session).

In the early years of the history of the Nation the American marine occupied a proud position. Even as late as 1821 and 1826 the percentage of imports and exports carried in American vessels was 88.7 per cent and 92.3 per cent, respectively. In 1870 it had declined to 35.6 per cent, and in 1913–1914

it was 10.1 per cent and 9.7 per cent, respectively (Annual Report, Commissioner of Navigation 1915, p. 159). As stated in the report of the American Merchant Marine Commission, "The condition of the remnant of the ocean fleet of the United States is therefore absolutely desperate * * *. Our war fleets in the Mediterranean and South American waters scarcely see a United States merchant flag from one year to another" (Report, *supra*, pp. vi, vii). We had long ceased to be a seafaring people.

The dangers incident were pointed out. Lack of a merchant marine means the want of the naval reserve and transport service indispensable in time of war. The Merchant Marine Commission estimated, moreover, that $150,000,000 was paid annually to foreign shipping for freight, mail, and passenger service (p. 5). Also, the lack "of marine delivery wagons" to South America was held to be a prime cause of our inadequate commerce with South America (p. 6).

The decline of the merchant marine was laid to many causes. It was everywhere recognized that the American maritime industry suffered from (1) a higher cost of construction of ships, and (2) a higher cost of operation, due primarily to higher wage standards. The projects to overcome both handicaps have been many. Admiralty subventions have been proposed, as well as navigation bounties and construction bounties. A mail subsidy project had been provided by act of March 3, 1891, c. 519, 26 Stat. 830. The Merchant Marine Commission reported in 1905 in favor of subventions. The minority

proposed the imposition of discriminating duties. The former project failed on account of public sentiment against subsidies. The latter was attempted in 1913 by the 63d Congress, but on account of prejudice against the disruption of treaty relations likewise came to naught. (Sec. IV J, subsec. 7 of the act of Oct. 3, 1913, c. 16, 38 Stat. 114, 196; see *Five Per Cent Discount Cases*, 243 U. S. 97.)

An attempt to remove the handicap of higher cost of labor was made by act of June 26, 1884, c. 121, 23 Stat. 53, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes." Section 20 provided that American vessels could engage seamen in foreign ports to serve for round trips without being required to reship them in ports of the United States. The effort was to reduce the standard of American seamen's wages to that of the foreign competitors. It failed of the desired results. In the act of March 4, 1915, the purpose was to remove the same handicap, but by the opposite method of seeking to raise wage standards to the American level.

2. The legislative purpose to equalize the wage cost of foreign and domestic vessels leaving our ports was accomplished by limiting the enforcement of foreign contracts.

The plan was simple. Section 16 of the Seamen's Act abolished the remedy of arrest and imprisonment for desertion of foreign seamen, and regardless of the contract made abroad the treaties requiring

its specific performance were abrogated. Wages are higher in American than in foreign ports. It was contemplated that the foreign seaman who signed shipping articles at the lower wage scale prevailing in foreign ports would, since not prevented by legal process, follow economic law upon reaching American shores and find a job here at higher wages. The foreign ship must then fill up its crew at the current wages in our port. Thus both the American and competing vessels leaving the port would have the same labor operating cost.

But such a plan would prove entirely abortive if the foreign seaman in our ports were unable to obtain sufficient money to carry him until he secured his next job and were compelled by his immediate necessities for food and lodging to remain with the foreign ship. The purpose of the proviso to section 4 is to provide that sum of money.

Section 4 is an amendment to Revised Statutes, section 4530, as amended by section 5 of the act of December 21, 1898, c. 28, 30 Stat. 756. The act of December 21, 1898, provided for payment to the seaman of half the wages due him at every port where the vessel unloads or delivers cargo "unless the contrary be expressly stipulated in the contract." The quoted clause was stricken out and a proviso added as follows:

> *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of

> the United States shall be open to such seamen for its enforcement.

Presumably because there was no doubt that the statute was intended to cover a foreign seaman who had signed his contract abroad, no question as to construction is certified to this court.

The language is hardly susceptible of a contrary interpretation. It would have practically no room for operation if limited to the case of contracts by foreign seamen executed in the United States. Foreign seamen on foreign vessels are usually shipped abroad, and the cases would be few indeed of contracts made in ports of the United States where both the vessel and the seaman return to our harbors.

(a) The deliberate intent to cover contracts made abroad is shown by the committee reports and legislative history.

The proceedings of that body show that the proviso covering seamen on foreign vessels was added for the precise purpose of aiding the American merchant marine—a purpose which fails of accomplishment if all seamen on all foreign ships who have made contracts abroad at low wages, and enter American ports, do not feel at liberty in our harbors to demand half of their wages and seek other employment. The committee reports furnish conclusive evidence on the matter. House Report No. 645, 62d Congress, 2d session, which accompanied H. R. 23673, reported favorably a bill in which section 3 was in the language of section 4 of the present Sea-

men's Law. The favorable majority report stated (pp. 7–8):

> Two things are essential to the building up of our merchant marine; one is the creating of a condition where the initial cost of the vessel is as low as that of the foreign vessel and the other is an equalization of the operating expenses.
>
> This bill will tend to equalize the operating expenses. Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in the ports of the United States; hence the operating expenses of a foreign vessel are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheapest, but it is proposed by this bill to give the seamen the right to leave the ship when in a safe harbor, and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyage. That will equalize the cost of operation, so that vessels of the United States will not be placed at a disadvantage.
>
> * * * * *
>
> Section 3 amends present law by striking out the following: "Unless the contrary be expressly stipulated in the contract" and inserting in its place as follows: "and all stipulations to the contrary shall be held as void".

> The section thus amended gives the seaman the right to demand one-half the wages due him in any port, notwithstanding any contract to the contrary, and extends its application to seamen on foreign vessels while in American harbors, and the whole section becomes part of the means by which the cost of operation of all vessels taking cargo out of any American port may be equalized.

One of the grounds on which the minority report objected to the legislation was that the statute affected the enforcement of contracts made abroad which are valid where made.

Definite language is used also in the favorable House report accompanying S. 136, which became the seamen's law (H. Rept. No. 852, 63d Cong., 2d sess.), and a quotation is made from the House report above cited.

The legislative history of the act is confirmatory. Section 3 of H. R. 23673, Sixty-second Congress, Second session, was presented to the House by Mr. Wilson of Pennsylvania, on April 23, 1912 (48 Cong. Rec. 5242). Opposition developed on the ground that it was not in accordance with comity and was not good policy thus to affect foreign contracts of strangers who desire to trade with us (48 Cong. Rec. 9259). An amendment was offered, striking out the proviso with reference to the foreign seamen (48 Cong. Rec. 9502, 9503). The difference in the wages of American seamen from British seamen, amounting to 16 to 20 per cent, was, however, cited (48

Cong. Rec. 9435; see also Report Commissioner Navigation, 1906, pp. 64, 92), and it was said the section would have the effect of raising wages to the American level and equalizing labor cost of operation of foreign and American boats (48 Cong. Rec. 9259, 9429, 9431, 9432, 9434, 9435). So the amendment was rejected by the House (48 Cong. Rec. 9502, 9503).

In the third session of the Sixty-second Congress on February 26, 1913, Mr. Burton presented to the Senate from the Committee on Commerce a substitute for H. R. 23673 which struck out the proviso that the act should apply to seamen on foreign vessels while in the harbors of the United States, and provided instead as follows:

> This section shall apply to seamen on foreign vessels owned in major part by American citizens, corporations, or holding companies when such vessels are in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement (49 Cong. Rec., pt. 5, p. 4567).

In presenting the report Mr. Burton said:

> * * * we do not believe that we have any right to interfere with the management of foreign ships on articles signed abroad.

The Senate committee substitute was passed by both Houses, but the President did not sign the bill, so it failed to become law (49 Cong. Rec. 4588, 4806, 4854).

In the next Congress, the Sixty-third, however, sentiment changed. The act was reported in the broad terms as finally passed. The prevailing sentiment was expressed by Mr. Fletcher, who was acting chairman of the Senate committee in charge of the bill, as follows (50 Cong. Rec. 5749):

> First, Senate bill 136 permits seamen on foreign vessels to leave their vessels in ports of the United States; that was one great thing to be worked out; second, it permits seamen to draw one-half of the pay due them in any port where the vessel lies or delivers cargo, making this section applicable to foreign vessels while they are within the jurisdiction of our laws; * * *
>
> The right to one-half the earned wages at a stopping place on a voyage would seem to be reasonable. It would not induce a sailor to leave a ship when he was being decently treated and fairly compensated to have the privilege of quitting and collecting only one-half of what he had earned. On the other hand, if the sailor is maltreated, or for sufficient reason he quits the vessel, perhaps in a strange land, he should at least have half the wages he has earned in cash. The forfeiture of the other half would seem to be ample allowance by way of liquidated damages for breach of his contract.

See also 52 Cong. Rec. 4646, as follows:

> Mr. HARDY. We are struggling to build up an American merchant marine. If you do not have rules that restrict competitors of the

American merchant marine, to the full extent and just as you restrict the American merchant marine, you never can have an American merchant marine. The real milk in the coconut seems to be this. * * * A seaman comes from Naples here on a low wage. When he gets into the port of New York, he is dissatisfied. He has been out a month, the ship is safe in port, and some wages are due him. The shipmaster, fearing that perhaps he will not return, will not give him a dollar. He can not go out in New York and pay for a night's lodging or for a meal. Had you not just as well have the law say, "We will arrest him and put him back," as to have the law say that when he gets to New York he can not get a dollar or a dime of the wages due him simply because he has contracted that way across the water? We provide here that when these men come to our ports they shall be entitled to demand half the wages earned, and if refused to go to our courts and sue for one-half of the wages due them. Mark you, we do not encourage the seamen to desert, and we make him lose all he leaves—one-half his wages and his clothing and property on board the ship—but we give him a little mite, so that he may buy a night's lodging or pay for a breakfast.

* * * We want to build up an American merchant marine. We want to put the American shipowner on the seas governed by the same rules, subject to the same restrictions that the foreign shipowner is under; no more, no less, and this bill in addition to striking the shackles from the limbs of the seaman

places our shipowner on the ocean on equal terms with the shipowner of any other nation with one exception, and that is that he may have to pay more for his vessel, but if it is one in the foreign trade only he gets his vessel on equal terms. Then when you put two vessels under different flags, plowing the same waters, and the seaman is free, the seamen of those two vessels will receive the same wages because the seamen will go to where they can get higher wages. But if you shackle them, if you say we will arrest you if you desert, or we will hold you to your ship by the pangs of your stomach, or we will not let you sleep, we will not let you eat, we will not give you anything you have earned if you leave the ship, if we do that then the shipowner abroad can hold in chains his seamen as long as he pleases.

(b) A reading of the Act as a whole also shows this intent.

Consideration of the act of 1915 as a whole shows how carefully Congress had framed the entire program for the resuscitation of the merchant marine. It was patent that ships of American construction would be of little avail, especially in time of emergency, if American seamen were not at hand to man them. Historical examples were cited to show that the best equipped vessels were valueless in battle if manned by landsmen, as against ships of poorer construction handled by men of experience before the mast. It was necessary again "to get the American boy to sea."

Section 4, by permitting the raising of wages, conduces directly to that end. Cognate provisions throughout the act, which is entitled in part "An act to promote the welfare of American seamen," are no less effective. The abolition of arrest and imprisonment by section 16 makes the seaman's calling more dignified, and consequently more attractive. Section 6 abolished the cramped forecastle quarters, in which it was frequently almost impossible to live, so far as vessels thereafter built are concerned. Section 10 improves the scale of provisions. Section 11 was aimed at the "crimp" and is a vital part of the entire scheme, as will soon be seen. The efficiency and language requirements for seamen in section 13 also have the effect of increasing the number of American seamen.

In the spring of 1915 the European war had strikingly brought to the attention of the legislature the importance of an adequate shipping service, and the Nation was thoroughly aroused to the evils incident to the scanty existing facilities. Congress made a bold attempt to aid the national interests in the proviso to section 4. Opinions may differ as to the wisdom of the method adopted. The legislative plans may or may not work out as intended. Foreign countries may take counter measures. There can be no doubt, however, that foreign vessels were deliberately touched, especially those which made low-wage contracts with seamen abroad.

It only remains to inquire whether the subjecting of such vessels entering our ports to the conditions specified is within the power of the National Legislature.

3. Section 4 is valid as a condition upon the entry of foreign vessels into American ports.

After March 4, 1915, every master of a foreign vessel was advised that if he entered an American port subsequent to the time the act went into effect he must pay his seamen half of the wages earned. Ample notice was given in section 18, which provided that the act should take effect as to foreign vessels twelve months after its passage; and where treaty provisions were involved, after the expiration of the period fixed in the notice of abrogation of the treaty articles, as provided in section 16.

A foreign merchant vessel has no vested right to enter our ports. The act of entry signifies acceptance of the conditions imposed.

The power to impose such conditions is an incident to the sovereignty of the nation. Vattel, Law of Nations (Chitty, ed. 1863), p. 40. The faculty to prevent all foreign vessels from entering the ports of the country, as in an embargo, and to admit them only upon conditions within the uncontrolled discretion of the legislature, is plenary and well settled. See *Patterson* v. *Bark Eudora*, 190 U. S. 169; *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320. The power has been exercised by Congress in its absolute discretion from the beginning with reference to the exclusion of merchandise from foreign countries. *Buttfield* v. *Stranahan*, 192 U. S. 470, 492, 493; *Weber* v. *Freed*,

239 U. S. 325, 329. Familiar exercise of the power with reference to aliens brought this comment from the court in *Turner* v. *Williams*, 194 U. S. 279, 289:

> Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in * * *.

An analogy in the British law is the requirement that the Plimsoll load-line shall be observed by foreign vessels. Merchant Shipping Act of 1894, secs. 437–445, 57 & 58 Vict. c. 60.

It seems clear in this case that Congress was seeking to impose the wage requirement as a condition to the entry of foreign vessels. The legislature well recognized that there is no extraterritorial power over foreign contracts of foreigners. It knew of the provisions of the foreign laws and of the treaties under which matters of wages on foreign vessels were permitted to be settled in this country according to the laws of the treaty nations. It knew also of its power to subject the entry of foreign ships to conditions, from the frequent citation within the legislative halls of *Wildenhus's Case*, 120 U. S. 1, 11, where it is said:

> It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes * * *.

The *Strathearn* was not a ship which entered a protecting harbor in distress. Nor was it a public vessel

of a friendly sovereign, consent to whose entrance may be implied. *The Exchange*, 7 Cr. 116. Neither is the matter one of the imposition of a criminal penalty for a completed act committed abroad which is sought to be imposed upon a person who happens by chance subsequently to come within the jurisdiction of the court. The *Strathearn* shipping articles looked to entry at Newport News, Va. The vessel came voluntarily in the course of trade and with knowledge of the condition imposed by the statute.

It is of course unnecessary that Congress label its enactment with the words "This is a condition." It is plain enough from the terms used. This is set at rest by the cases of the *Oceanic Steam Nav. Co., supra*, and the *Bark Eudora, supra*.

In *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320, the statute was section 9 of the act of March 3, 1903, c. 1012, 32 Stat. 1213, as follows:

> That it shall be unlawful for * * * the owner, master, agent, or consignee of any vessel, to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease; and if it shall appear to the satisfaction of the Secretary of the Treasury (Secretary of Commerce and Labor) that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall

> pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars * * *.

The steamship company sought to recover the fine imposed by the Secretary of Commerce and Labor, which it had paid under protest. The court recognized as apparent that the power to impose the fine was lodged with the Secretary only for acts performed abroad, namely, the want of competent medical inspection at the point of foreign embarkation, together with the subsequent entry of the vessel within our territory. The court upheld the fine as lawfully imposed and said (p. 342):

> In view of the absolute power of Congress over the right to bring aliens into the United States we think it may not be doubted that the act would be beyond all question constitutional if it forbade the introduction of aliens afflicted with contagious diseases, and, as a condition to the right to bring in aliens, imposed upon every vessel bringing them in, as a condition of the right to do so, a penalty for every alien brought to the United States afflicted with the prohibited disease, wholly without reference to when and where the disease originated. It must then follow that the provision contained in the statute is of course valid. * * *

The Court made a similar holding in *Patterson* v. *Bark Eudora*, 190 U. S. 169. The statute there involved was section 10 (a) of the act of December 21, 1898, c. 30 Stat. 755, 763, which provides that it shall be, and is hereby made, unlawful to pay any

seaman wages until he has actually earned the same and adds "(f) That this section shall apply as well to foreign vessels as to vessels of the United States." The Court said (p. 178):

> The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which these vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign as well as to domestic vessels. Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the courts are not at liberty to dispense with.

4. The statute declares a rule of policy of the forum forbidding the enforcement of such contracts.

With reference to the validity of contracts, various rules have been applied. The governing law has been held to be that of the place of contracting (*Scudder* v. *Union Bank*, 91 U. S. 406); that of the place of performance (*London Assurance* v. *Companhia de Moagens*, 167 U. S. 149); of the place which the partiesc hoose (*Liverpool & Great Western Steam Co.* v. *Insurance Co. of North America*, 129 U. S. 397, 458). But whatever may be the correct

rule in this respect, it is settled law that a court is not to recognize and enforce an obligation when to do so is contrary to the public policy of the forum.

A recent statement of this rule was made by Mr. Chief Justice White in *Bond* v. *Hume*, 243 U. S. 15. Suit was brought in Texas in connection with the sale on defendant's account of cotton for future delivery upon the New York Cotton Exchange. The contract was valid in New York. A statute of Texas, which made criminally punishable the dealing in futures except under certain conditions, was held not to cover the particular case. The Chief Justice, delivering the opinion of the Court, said (p. 21):

> * * * It is equally rudimentary that an independent State under that principle will not lend the aid of its courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, would lead to disturbance and disorganization of the local municipal law, or in other words, violate the public policy of the State where the enforcement of the foreign contract is sought.

The rule does not depend at all upon the "consensus of morals," as the courts below seemed to hold (R. 392, p. 32; R. 394, p. 49). In *Union Trust Co.* v. *Grossman*, 245 U. S. 412, it was held that the courts of Texas were not required to enforce contrary to the policy of Texas a promissory note executed in Illinois, whereby a wife domiciled in Texas guaranteed a husband's contract. Counsel had unsuccessfully contended "that the

ıct to be refused life must be vicious, or unjust, ımoral * * *, something inherently bad it, shocking to one's sense of right—in the ıent of the courts, something pernicious and ous to the public welfare" (245 U. S. 414).

The Kensington, 183 U. S. 263, a contract made lgium, valid by the law of Belgium, limiting ght of recovery for loss of baggage to an arbi- amount, was held unenforceable in the courts s country, and damage awarded for the full of the baggage injured. This court said (p. 269):

> As, however, the ticket was finally countersigned in Belgium, and one of the conditions printed on its face provides that "all questions arising hereunder are to be settled according to the Belgium law, with reference to which this contract is made," it is insisted that such law should be applied, as proof was offered showing that the law of Belgium authorized the conditions. The contention amounts to this: Where a contract is made in a foreign country, to be executed at least in part in the United States, the law of the foreign country, either by its own force or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States, even although to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it.

ether or not a release to a common carrier iability for negligence is valid is not a ques- f moral turpitude. *Fonseca* v. *Cunard Steam-*

ship Co., 153 Mass. 553. As was further said in *The Kensington*, 183 U. S. 263, p. 270:

> Nor is the suggestion that, because there is no statute expressly prohibiting such contracts, and because it is assumed no offence against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion.

The existence of the policy may be determined from decided cases and general principles. *Oscanyon* v. *Arms Co.* 103 U. S. 261. It may, however, be declared by legislative act. As said by Mr. Chief Justice White in *Bond* v. *Hume*, *supra*, 243 U. S. 15, 22, 23:

> And finally it is certain that as it is peculiarly within the province of the law-making power to define the public policy of the State, where that power has been exerted in such a way as to manifest that a violation of public policy would result from the enforcement of a foreign contract validly entered into under a foreign law, comity will yield to the manifestation of the legislative will and enforcement will not be permitted.

Indeed, this court has always recognized the peculiar province of the legislature to declare the existence of a rule of public policy. In *Knott* v. *Botany Mills*, 179 U. S. 69, the public policy was settled by the Harter Act. In that case bills of lading signed at

enos Aires exempted the carrier from liability
negligence of the master of a British vessel.
el was filed to recover for damage caused by
ligence and the point was raised that the statute
not govern foreign vessels transporting mer-
ndise from foreign ports under bills of lading
ied abroad. The exemption clause of the con-
ct was held unenforcible, and the court said
74): "The power of Congress to include such
es in this enactment cannot be denied in a court
the United States."

t can hardly be doubted that the Seamen's
t declares the public policy controlling the present
e. The legislature did not content itself with
viding that section 4 "shall apply to seamen
foreign vessels while in harbors of the United
tes," but added, that the rule for the forum might
be mistaken, "and the courts of the United States
ll be open for its enforcement."

Whether the obligation created by foreign law is
called contract or tort, the public policy of the
ited States may require the United States courts to
orce the obligation not at all or only partially.
forcement of a foreign obligation partially, that
where certain terms are disregarded, has just been
n. The substance of the obligation under foreign
, in the cases of the *Kensington* and the *Botany*
lls, was to pay only a certain amount of damages.
arose from the acts in performance of a shipping
ntract. The clauses, and only those clauses, which
re contrary to the public policy of the United

States were refused recognition. The rest were enforced. In cases like the present, so much of the foreign contract as provides that the seamen shall not be paid in ports of the United States may be disregarded as opposed to our national interest and the contract otherwise enforced.

The courts may indeed disregard the entire contract, and recognize the fact of services performed by the seamen, and the corresponding obligation on the part of the master to pay. *Cuba R. R. Co.* v. *Crosby*, 222 U. S. 473, 478. It would be proper in such case to adopt the contract price as the measure of the value of the services, it being the only evidence. *Clark* v. *United States*, 95 U. S. 539, 543.

There is, moreover, recent precedent for allowing less than the full value of the services to be recovered. In *The Titanic*, 233 U. S. 718, it was held that Congress may limit the extent of recovery in a court of the United States for an obligation incurred under foreign law. "It is true," said Mr. Justice Holmes, delivering the opinion of the court, "that the foundation for a recovery upon a British tort is an obligation created by British law." He continued:

> (p. 732.) But it also is true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to the domestic policy, or may decline to enforce it except within such limits as it may impose. *Cuba Railroad Co.* v. *Crosby*, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed. 647. It is competent therefore for Con-

gress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out. *Butler* v. *Boston & Savannah Steamship Co.*, 130 U. S. 527.

5. There is no question of validity with respect to contracts executed between foreign seamen and foreign masters within the United States.

Although the first question certified broadly refers to the validity of the entire section, it is presumed that no serious question of constitutionality is presented with reference to contracts of employment on American or foreign vessels which are entered into in the United States. See *St. Louis, Iron Mountain, etc., Ry.* v. *Paul*, 173 U. S. 404; *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; *Dayton Coal & Iron Co.* v. *Barton*, 183 U. S. 23; *Chicago, B. & Q. R. R. Co.* v. *McGuire*, 219 U. S. 549, 570; *Erie Ry. Co.* v. *Williams*, 233 U. S. 685; *Patterson* v. *Bark Eudora*, 190 U. S. 169.

Moreover, wage contracts of seamen have long been subject to special regulations for their benefit. The act of 2 Geo. II, c. 36, perpetuated by 2 Geo. III, c. 31, required the shipping articles to specify two points, wages and the voyage.

The first Congress of the United States required a shipping agreement, and provided that the seaman should be entitled to one-third of the wages due him at every port where the ship unloads or delivers cargo, unless the contrary be expressly stipulated in the

contract. Act of July 20, 1790, c. 29, 1 Stat. 131. Revised Statutes, sec. 4530, carried forward these provisions. It was amended by section 5 of the act of December 5, 1898, c. 28, 30 Stat. 756, so that the seaman became entitled to one-half instead of one-third of the wages due. This statute was the immediate forerunner of section 4 of the Seamen's Act of 1915. See also Revised Statutes, Title LIII, chapter 3, sections 4523, 4525, 4529.

The reasons that have influenced in this respect legislatures and the courts of admiralty were well stated by Lord Stowell in *The Minerva*, 1 Hag. Adm. 347, 355, as follows:

> On the one side are gentlemen possessed of wealth, and intent, I mean not unfairly, upon augmenting it, conversant in business, and possessing the means of calling in the aid of practical and professional knowledge. On the other side is a set of men, generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of procuring useful information, and almost ready to sign any instrument that may be proffered to them; and on all accounts requiring protection, even against themselves.

One means of imposition commonly practised upon seamen is to keep them without pocket money.[1]

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[1] For instance, upon the seaman's request for a few dollars in port he is referred to the ship's tailor or bumboat man. He signs up with the tailor for an article of clothing, charged to him at $5 and receives $2. The balance is divided between the master and the tailor. See document filed with the Certificate in this case, entitled "American Seamen," p. 12.

Section 4 was designed to relieve the seaman from his immediate necessities, and in this respect is analogous to the truck act sustained in *Knoxville* v. *Harbison*, 183 U. S. 13; and the weekly cash payment statute sustained in *State* v. *Brown & Sharpe Mfg. Co.*, 18 R. I. 16. The requirement that the master only pay one-half of the wages earned by the seaman, and unpaid to him, is not an unreasonable hardship.

I.

Section 11, proviso (e), was designed to prohibit the allowance of credit in the United States courts for advances made to foreign seamen in foreign ports.

1. The section is part of the legislative project to aid the American merchant marine.

In this case questions similar to those raised in that of the *Strathearn* are presented. Section 11 of the Seamen's Act is involved, which prohibits the payment of wages to seamen in advance of the time in which they have been earned.

The Seamen's Act must be regarded as a whole. Though at first blush unrelated, section 11, more particularly paragraph (e) thereof, which provides "That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States * * *," is cognate with section 4.

The legislative project in the latter section, which was to raise the wage cost of foreign vessels entering our ports to equal those of competing American vessels, is dependent upon the efficacy of the plan to provide the seaman with pocket money; and is entirely thwarted if by a contract made abroad the seaman can be altogether deprived of the right to receive earnings in our ports. The facts of the present case are sufficient illustration. The seamen were advanced just enough in England so that if the advances

are counted, together with other subsequent payments, no money whatsoever would be payable even under the half-wage provision of section 4. The proviso to section 11, in paragraph (e), covering foreign vessels, was designed to meet this situation.

When the 63d Congress came comprehensively to deal with the laws relating to shipping and seamen, it found legislation on the books against the system of advance payments.

The advance or allotment note is the key to the crimping system, whereby seamen are deprived of their earnings and kept in continual state of dependence. A crimp is defined in the Standard Dictionary (Funk & Wagnalls, 1905) as—

> One who decoys people to a place where they are robbed, swindled, or impressed into the army or navy, or otherwise wrongly treated.
>
> Naut.—An extortionate man who preys upon sailors;

and by Webster's Dictionary (1890) as—

> A keeper of a lodging house where sailors and emigrants are entrapped and fleeced.

An insight into the methods by which the crimp operates is furnished by the testimony taken in an investigation conducted by the Bureau of Navigation, and set forth in the Annual Report of the Commissioner of Navigation for 1903, as follows (p. 37):

> * * * One witness, a boarding-house keeper, thus testifies as to the bonus: "Some years ago when shanghaiing was carried on at this port,

twenty or thirty years ago, a man would drugged or knocked down and shanghai put on board ship in an insensible condit sometimes covered with blood. In this m ner the premium paid for the furnishing of became known as blood money, but since business is now conducted in a more resp able manner, and the shanghaiing of men is practiced as formerly, the premium has b termed "bonus."

The Commissioner's Annual Report for 1895 st (pp. 33–34):

If the seaman were in fact fully capabl entering into a contract his adequate pro tion would rest with himself. * * * the whole theory of maritime law, not onl the United States but of all other marit powers, is that the seaman is the nati ward, incapable, without the advice and tection of government, of entering into tracts. The theory doubtless correspond an historical and present fact. * * *

Of the allotment note to the "original c itor" it may as truly be said as of the Bri advance note that it "is one great caus the deterioration of our seamen; withou the crimp's occupation would be gone; t would be no inducement for him to get wo less scamps to sign articles. He now s these men for the advance note alone, and man gets little or no benefit from it."

"The seaman is thus in debt to the shi the outset of the voyage. One strong ind ment to good conduct, the earning of

> wages, is removed, and for it is substituted an inducement to desertion, his debt to the ship. The conditions of his shipment tend to create an almost continuous state of debt, which carries with it dependence, if not mendicancy, at home and abroad, dissatisfaction and resultant disregard of discipline, to which, it is believed, may justly be charged, in part at least, the disappearance of the American seaman. * * *."

Frequently the crimp operates in league with the master of the vessel. The seaman applying for work on board ship is refused employment and referred to the crimp. Upon application to the latter for an assignment of his wages yet unearned, the sailor is then made a part of the crew. The crimp and the master divide the advance money. Such a procedure, in part at least, is reflected by the record in the *Rhine* and *Windrush* (*supra*, p. 8).

Judicial notice was taken of the system in the *Patterson* case, *supra*, 190 U. S. 169, 175, as follows:

> The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages.

The unconscionable character of the agreements under which the advance note is signed, in view of the necessities of the seaman and the traditional guardianship over him by the court, is in many in-

stances so great that admiralty courts refuse to enforce the agreement in absence of legislation. See *The Eclipse*, 53 Fed. 273, 275; affirmed 60 Fed. 105; *Metcalf* v. *Weld*, 14 Gray 210, 213.

It was because the viciousness of the crimping system is wrapped up with "advances," that the legislature prohibited all such disposition of unearned wages, by section 10 of the act of June 26, 1884, c. 121, 23 Stat. 53. The act was amended by act of June 19, 1886, c. 421, 24 Stat. 79, section 3 of which permitted assignments of future wages to "original creditors." The "original creditor" loophole was largely closed by section 24 of the act of December 21, 1898, c. 28, 30 Stat. 755, which was sustained as constitutional in the *Patterson* case. The criminal penalty was increased by act of April 26, 1904, c. 1603, 33 Stat. 308.

Thus, on March 4, 1915, when the Seamen's Act was passed, the payment of such advances in this country was already criminally punishable. It had been settled, moreover, by the *Patterson* case that it was no less so because made by foreign masters to foreign seamen, even though the particular advance was free from extortion. See *Otis* v. *Parker*, 187 U. S. 606; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201; *Mutual Loan Co.* v. *Martell*, 222 U. S. 225; *Heller* v. *Lutz*, 254 Mo. 704. Therefore, if only advances made in the United States were meant to be treated as invalid in libels for wages, it was unnecessary to provide, in addition to the criminal penalties, that such advances should not be recog-

nized as defense. Yet in addition to the criminal penalty, all-embracing language is used as follows:

> (a) * * * The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and shall be no defense to a libel suit or action for the recovery of such wages.

The terms "in no case" include advances wherever made. To give them effect, they must be deemed to cover advances made abroad, which the criminal provisions do not reach. But to make sure that the provisions with reference to the civil remedy should cover advances made abroad by vessels later entering our ports, Congress in the act of 1915 framed paragraph (e) so as to read "this section shall apply as well to foreign vessels *while in the waters of the United States* as to vessels of the United States," adding the italicized words to the existing law.

Thus again it appears that the welfare of the seaman is remarkably interrelated with that of the merchant marine. The main paragraphs of section 11 afford protection for the seaman, and are an effort to secure his wages earned and his consequent financial independence. The proviso in paragraph (e) of the section operates to aid American shipping by refusing to recognize as valid the attempt to deprive the seaman brought into our ports of one-half of the wages he has earned; so that he may have

opportunity to seek other employment, foreign vessels will have to hire new crews at the current port rate, and their wage cost will become equal to that of domestic vessels. That this was the legislative purpose is further shown by consideration of the legislative history.

2. The legislative history of the act shows the intent to cover advances made abroad.

The question whether advances made abroad should be a defense in libel suits for the recovery of the seamen's wages in our courts was a sharp issue in the legislature. Amendments seeking to limit the operation of section 11 to advances made in this country were proposed, and were adopted by one branch of the legislature, only finally to be definitely rejected.

In the 62d Congress, 2d session, opposition to paragraph (e) had developed on the ground that the language did apply to contracts made abroad. An amendment was offered by Mr. Humphrey, who proposed to limit the proviso "to any agreement made in American ports." This was withdrawn but a further proviso adopted, as follows: "That treaties in force between the United States and foreign nations do not conflict" (48 Cong. Rec. 9665, 9666), which would have had the effect of excluding from the operation of the section the vessels of those nations with which we had treaties providing that matters of wages be settled according to the laws of the nations before the consular agents.

In the 62d Congress, 3d session, the Senate committee reported a substitute bill, of which section 12

(section 11 of the present law) was an amendment to section 24 of the act of December 21, 1898. 49 Cong. Rec. 4563. Paragraph (e) of the committee substitute was as follows:

> That this section shall apply as well to seamen engaged in ports of the United States for service on foreign vessels as to seamen employed on vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty as the master, owner or agent of a vessel of the United States would be for a similar violation.

The Senate amendment was adopted by the legislature in that form (49 Cong. Rec. 4588, 4801, 4806), the bill was presented to the President (49 Cong. Rec. 4854), but not signed.

If the act as finally passed March 4, 1915, had retained the language quoted, then unquestionably only advances made in American ports would be covered. But it was stricken out.

In the 63d Congress the same opposing interests clashed. The bill which passed the House limited the effect of the section upon foreign advances by the proviso "that treaties in force between the United States and foreign nations do not conflict herewith," like that adopted by the 62d Congress, 2d session. But this restrictive proviso was finally removed in conference (Report No. 1439, 52 Cong. Rec. 4639); and section 16 expressly required the abrogation of any treaty provision in conflict with the act. The

express abrogation, since unnecessary (*Whitney* v. *Robertson*, 124 U. S. 190, 194), is itself evidence of congressional intent.

The opposition voiced by Mr. Burton throughout the 63d Congress as in the preceding Congresses, was on the ground that section 10 (e) did refer to foreign contracts between foreigners. 52 Cong. Rec. 4741.

On the motion to reconsider, Mr. Burton restating the grounds of objection, referred to the bill presented by him which contained the limiting language "so far as they relate to the engagement of seamen in the United States" and continued (52 Cong. Rec. 4819):

> The last portion is significant. That was in the bill which passed the House and Senate in 1913; it was in the bill as recommended by the Committee on Commerce, expressly in the most distinct language limiting the operation of this law to the engagement of seamen in the United States. This last line is left out in this conference report, and I presume it is left out with a purpose.

Congress therefore imposed this condition upon the entry of foreign ships into our ports after its attention had been specifically directed to the point.

8. The fact that advances made in this country are criminally punishable is not sufficient reason for enforcing foreign advances in this libel for wages.

The burden of the opinion of the Circuit Court of Appeals is that Congress intended its direction with reference to the allowance of credit for advance

wages in libel suits to cover only those advances for which criminal penalties may be imposed (R. 31).

Apart from what has just been said as to the intention of Congress, the criminal provisions are wholly separable from those here important. Upon this point, the case of *Knott* v. *Botany Mills*, 179 U. S. 69, which is not mentioned in the opinion of the Circuit Court of Appeals, is a precise precedent. The Harter Act under consideration in the *Knott* case, not only nullifies exemption for negligence contained in a bill of lading on vessels engaged in the foreign trade, but also imposes a criminal penalty for refusal to issue bills of lading of the proper character. It was held that under the Harter Act the clause exempting a British carrier from liability for negligence was without effect, although the bill of lading was signed in the Argentine. In the opinion it was stated (p. 76):

> It was argued that this provision imposing a penalty would cover a refusal to give a bill of lading without the clauses prohibited by the first section; and could not extend to acts done in a foreign port out of the jurisdiction of the United States. But whether that be so or not (which we are not required in this case to decide), it affords no sufficient reason for refusing to give full effect, according to what appears to us to be their manifest meaning, to the positive words of the first section * * *.

In *United States* v. *Twenty-five Packages of Hats*, 231 U. S. 358, a libel was sustained which sought to

forfeit certain imports on account of the fraud of foreign consignors. The court stated (p. 361):

> It was argued that the goods could only be forfeited for the same acts that would support an indictment, and inasmuch as the consignor could not be prosecuted here for making a false invoice in a foreign country, neither could the goods be forfeited for the same conduct in the (p. 362) same place. But while punishment for the crime and forfeiture of the goods will often be coincident penalties, they are not necessarily so, nor is there any inconsistency in proceeding against the *res* if the wrongdoer is beyond the jurisdiction of the court. The very fact that the criminal provision of the statute does not operate extraterritorially against the consignor, would be a reason why the goods themselves should be subjected to forfeiture on arrival here.

Whether the criminal penalty could be imposed upon a foreign master entering our ports after having given an advance abroad is a question not involved in the present case. It is not altogether clear, however, that it could not. In *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320, a criminal penalty was enforced against the shipowner for bringing immigrants to our shores with a disease which could have been detected by examination abroad, on the theory that the penalty attached as a condition of entry of the vessel. See also *United States* v. *Nord Deutscher Lloyd*, 223 U. S. 512.

In any event, the provision of criminal penalty for advances made here shows only the more clearly

the policy against them. Both criminal and civil provisions should be enforced so far as jurisdiction obtains. For acts committed here, punishment may be imposed. But in the civil suit the advance may be disregarded, wherever it is made. Indeed, as has been said, to give effect to the separate provision as to libels for wages, it is to be presumed that its operation goes beyond cases reached by the criminal clauses.

II.

Section 11 offends no provision of the Constitution.

1. It imposes a condition of entry by foreign trading vessels into American ports.

It is submitted that Congress did in the present case what the Circuit Court of Appeals below said it might do (R. 30, 31):

> Congress might have treated it by imposing as a condition upon the entry to and clearance from American ports of both foreign and domestic vessels, that all advances, which were made to seamen in a foreign port before the voyage began, should be agreed by the ship to be disregarded in settlements required by the law to be made with seamen in the ports of this country.

If section 4 is valid for the reasons previously set forth, section 11 is also valid and for like reasons. No property of the foreign master is taken away without due process of law, for he has no property or contract right to enter American ports for the purposes of trade and disregard the attendant condi-

tions. He must be deemed to have known and consented to the terms of the statute when he came into the port of Mobile on February 22, 1917.

2. Enforcement of the foreign contract is not required when it is contrary to the public policy of the forum.

This proposition has already been discussed in the case of the *Strathearn*. As was said by Mr. Chief Justice (then Mr. Justice) White in *The Kensington*, 183 U. S. 263, 270, "The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion."

I.

Section 11 requires that in a libel for wages against an American vessel advances paid by the American master abroad shall not be treated as valid.

1. This was the intent of the legislature.

Consideration of the Seamen's Act as a whole shows that it was designed to put American and foreign ships on an equality with reference to wages. The cases of the *Rhine* and the *Windrush* stand or fall with that of the *Talus*. It is submitted that if an advance made abroad by a foreign ship is to be treated as invalid in a civil suit in the courts of the United States, a similar advance made abroad by an American ship also should be so treated.

(a) No inconsistent prior executive or judicial construction was adopted by the legislature.

The majority of the Circuit Court of Appeals based the decision primarily on the ground that Congress intended to adopt the executive and judicial construction which had been placed on the language of section 11 to the effect that advances in foreign ports were not prohibited. *The State of Maine*, 22 Fed. 734; Consular Regulations. See R. 7. It is submitted that the rule of prior executive and judicial construction is not applicable for various reasons.

The rule is not arbitrary. It affords a presumption operative in absence of countervailing evidence, but is of no avail where the true legislative intent

otherwise is manifest. "It is not allowable to interpret what has no need of interpretation." *United States* v. *Graham*, 110 U. S. 219, 221.

In the present case the environment in which the act was passed and the legislative history demonstrate the intent to cover all foreign-made advances by vessels, foreign and domestic, coming into our ports. The prime purpose to aid the merchant marine is otherwise defeated.

The act of 1915, moreover, amended the statute which had previously been construed, by words designed to do away with any previous misconception. The original act prohibiting advances, act of June 26, 1884, c. 121, 23 Stat. 53, sec. 10, which was construed in *The State of Maine*, provided as follows:

> This section shall apply as well to foreign vessels as to vessels of the United States; and any foreign vessel the master, owner, consignee, or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States.

The language of the act of 1884, therefore, looked to agreements made in the United States and clearances from our ports thereafter. It was so held in *The State of Maine*, 22 Fed. 734, and the ruling was made the basis of the consular regulation.

The act of 1884 was amended by act of June 19, 1886, c. 421 sec. 3, 24 Stat. 79; by act of December 21, 1898, c. 28, sec. 24, 30 Stat. 755; and act of April 26, 1904, c. 1603, sec. 1, 33 Stat. 308.

The Seamen's Act of 1915 added the words "while in waters of the United States" to qualify the words "foreign vessels." Thus, the validity of the advance by foreigners abroad was not sought to be affected, but only its recognition and enforcement in libels for wages in our courts against foreign boats which come into our waters. By omitting the qualifying words with reference to "vessels of the United States," the actual validity of the advance made abroad by American masters was, however, touched.

Reflexly, in the light of the prime purpose to put domestic and foreign vessels on equality as to wage costs so far as possible, the purpose to make the condition of entry to foreign boats in our ports as contended in the case of the *Talus* is disclosed.

Although the purpose of the act of 1915 is so clear that the correctness of the decision in the case of *The State of Maine* is immaterial, it may not be amiss to note that the decision in that case, if relevant, is open to serious question. It disregards the settled principle that the law governing the shipment of seamen abroad is the law of the flag. It disregards the requirement of Revised Statutes, section 4517, that the engagement of seamen in foreign ports shall take place before a consular officer, and that "the rules governing the engagement of seamen before a shipping commissioner in the United States shall apply to such engagements * * *."

The language of Mr. Justice Brown in *Houghton* v. *Payne*, 194 U. S. 88, 100, is peculiarly appropriate:

> A custom of the department, however long continued by successive officers, must yield to the positive language of the statute. * * *
>
> While it might well happen that by reason of the relative unimportance of the question when originally raised a too liberal construction might have been given to the word periodical, we cannot think that if this question had been raised for the first time after second class mail matter had obtained its present proportions, a like construction would have been given. * * *

2. The statute is valid.

Congress may impose in its discretion conditions upon the entry into American ports of American vessels as well as of foreign vessels. The citizen has no more vested right to engage in foreign trade without regard to legislative conditions, than the foreigner. *Buttfield* v. *Stranahan*, 192 U. S. 470; *Weber* v. *Freed*, 239 U. S. 325.

The courts, moreover, may apply the national law to determine the validity of contracts made abroad between seaman and master on national vessels. This was recognized in *The Belgenland*, 114 U. S. 355, a case of a collision between a Norwegian and a Belgian ship. The court said (p. 364):

> In the absence of such treaty stipulations, however, the case of foreign seamen is undoubtedly a special one, when they sue for wages under a contract which is generally

> strict in its character, and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interests of the ship-owners as well as those of master and crew, as well when the ship is abroad as when she is at home.

It has been pointed out that "the crew of a merchant ship lying in a foreign port is unlike a collection of isolated strangers travelling in the country; it is an organized body of men, governed internally in conformity with the laws of their state, enrolled under its control, and subordinated to an officer who is recognized by the public authority." Hall International Law, 6th ed., p. 199.

Frequently by treaty it is expressly provided that the national law shall apply in wage matters. See *Wildenhus's Case*, 120 U. S. 1, 11; *Tellefsen* v. *Fee*, 168 Mass. 188. In absence of treaty the law of the flag is commonly permitted to govern. See *The Elswick Tower*, 241 Fed. 706; *The Pendergast*, 29 Fed. 127; *The Leon XIII*, 8 Prob. Div. 121.

The statutes of the United States have regulated the payment of wages by American vessels to American seamen in foreign ports from the beginning. The act of July 20, 1790, c. 29, 1 Stat. 131, sec. 6, requires the master to pay the seaman one-third of his wages due at every port where the ship may unload cargo. Sec. 15 of the act of June 7, 1872, c. 322, 17 Stat. 262, carried forward as R. S. sec. 4517, requires masters of United States merchant ships to

engage seamen outside of the United States in the presence of the consular officer. The Revised Statutes, Title LIII, referring to merchant seamen, contains several similar sections. Sec. 4580 provides that the seaman may apply to a consular officer for discharge and obtain three months' extra wages if he is entitled to a discharge under an act of Congress or general principles of maritime law, while sec. 4581 imposes a penalty on a consular officer abroad who does not collect the extra wages for the seaman. See for other examples, secs. 4577, 4578, 4582.

Exercise of extraterritorial jurisdiction over citizens other than seamen is not infrequent (for examples see *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 356), though usually the Nation acts only in this regard in matters affecting the national interests. See act of January 30, 1799, c. 1, 1 Stat. 613, now section 5 of the Penal Code, c. 321, 35 Stat. 328; and *United States* v. *Craig*, 28 Fed. 795, 801.

Transactions on board a ship of American registry on the high seas would no doubt be governed by American law; *The Hamilton*, 207 U. S. 398, 403; and although a vessel is frequently called a detached floating island, the case is in truth an example of extraterritorial jurisdiction. *Scharrenberg* v. *Dollar Steamship Co.*, 245 U. S. 122, 127. In *United States* v. *Rodgers*, 150 U. S. 249, it was held that the United States courts have jurisdiction to try a person for assault with a dangerous weapon committed on a vessel belonging to a citizen of the United States

when the vessel was in the Detroit River within the territorial limits of Canada.

It is not urged that the American law applies exclusively to transactions aboard ship. With reference to police regulations of the port, port charges, and criminal matters affecting the peace and order of the community, the local law usually is enforced. The Argentine Republic would have the power, moreover, to apply its law in its courts with reference to payment of advances. See *Patterson* v. *Bark Eudora*, 190 U. S. 169, 178, where the court said:

> It is not pretended that this Government can control the action of foreign tribunals. In any case presented to them they will be guided by their own views of the law and its scope and effect, but the courts of the United States are bound to accept this legislation and enforce it whenever its provisions are violated.

But although the principle is not universally accepted (see Hall Int. Law, 6th ed., p. 202), the South American Republic would probably, as a matter of comity, adopt the rule which our courts follow in absence of statute and leave matters of wage relations to be dealt with by our law. See Moore, Int. Law, vol. 2, pp. 286, 290, 295; *Brown* v. *Duchesne*, 19 How. 183.

It is immaterial that some of the seamen on the *Rhine* and the *Windrush* may not have been actually American citizens. For the purpose of the present cases they must be deemed to be so. *Ross's Case*, 140 U. S. 453, 479.

CONCLUSION.

1. The answer to both questions in the case of the *Strathearn* should be that section 4 is constitutional.

2. In the cases of the *Talus*, the *Rhine* and the *Windrush*, the decrees of the Circuit Courts of Appeals should be reversed and those of the District Courts affirmed.

LaRue Brown,
Assistant Attorney General.

Robert Szold,
Attorney.

October, 1918.

○

Supreme Court of the United States

OCTOBER TERM, 1918.

No. [redacted]861

JOHN DILLON, Petitioner, vs. STRATHEARN STEAMSHIP COMPANY, Respondent, Claimant of Steamship *Strathearn*.

No. [redacted]392

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No. [redacted]394

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AMERICAN SEAMEN

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AMERICAN SEAMEN

EXTENSION OF REMARKS

OF

HON. JOHN E. RAKER

OF CALIFORNIA

IN THE

HOUSE OF REPRESENTATIVES

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HON. JOHN E. RAKER.

American Seamen.

Mr. RAKER. Mr. Speaker, pursuant to the permission given me by the House to extend my remarks on "American seamen," I take this opportunity of presenting the five articles by Mr. Andrew Furuseth, president of the International Seamen's Union of America, explaining his point of view in regard to the manner of the growing American merchant fleet, and setting forth the conditions which, in his opinion, now operate to discourage the young American from following the sea as a means of livelihood.

These articles by Mr. Furuseth are as follows:

SEAMEN FOR OUR MERCHANT FLEET—ARGUMENT AGAINST REPLACING SKILLED SAILORS WITH NAVAL RESERVE MEN WHO ARE TRAINED LARGELY ON SHORE—PREDICTION THAT THE PRESENT SYSTEM WILL BREAK DOWN.

[By Andrew Furuseth.]

Sea power is in the seaman. Vessels are the seaman's tools. Tools always belong to the races or nations who can use them. No nation developed sea power unless it furnished the seamen from its own population. No nation ever long retained sea power after its men quit the sea. The United States can not become a power on the sea, commercially of otherwise, unless the American shall again become a seaman. And he must become a seaman in the real sense of the word. The sea, being in itself real, has little toleration of inefficiency or imposture.

"An able seaman is a skilled mechanic with great abilities. * * * On sailing vessels his place in calm and storm never can be adequately filled by the unskilled, however numerous, nor in steamships in emergencies." (Bullen's Men of the Merchant Service.)

The United States is in an emergency, and its vessels are subject to conditions which will try its seamen to the uttermost. And yet it is seriously proposed, nay, practically determined, that such skilled merchant seamen as available are to be replaced by men, nearly all of whom know nothing of the sea. Officers grown gray in service at sea are to be displaced by young men with a smattering of sea training and some theoretical knowledge of navigation.

The proposal ought to be rejected. If determined, the determination ought to be reversed. This ought to be done and done quickly, and for the following reasons:

(1) It would be a waste of man power. Experience proves that three times as many men are required to man a merchant ship when operated by naval men as when operated by merchant seamen. This is the record of ships taken over and operated by the Navy in this war. This increase is in the operating crews of the vessels, and is not due to the carrying of gun crews.

CALLED WASTE OF TONNAGE AND SKILL.

(2) It would be a waste of tonnage. The additional men must be furnished with accommodation for sleeping and living on board the vessels. Such accommodation can only be provided by appropriating the cargo space.

(3) It would be a waste of skill. The officers and men now sailing are highly skilled. The officers have been gradually advanced because of their skill and experience. A very large number of these officers would be lost to the service. Age and physical defects would prevent them from joining the naval reserve, and yet they are the most valuable men in the merchant marine, where such defects in no way interfere with the performance of their duties. The sailors were good, able seamen when this war began. For more than two years the majority of them have faced the submarine. Many of their shipmates have lost their lives. They know the danger. Many have been on vessels that were torpedoed, and have saved themselves and others in the boats.

It would be a high estimate to assume that 25 per cent of these highly skilled seamen could be utilized by the Navy as enlisted Naval Reserves. The 75 or more per cent ought not to be wasted because they can not or will not enter term enlistment.

(4) It would be a waste of loyalty. While more than 60 per cent of these men are not citizens of this country, and while they are subjects of neutral or allied nations, they are loyal to the United States. They were grown men and trained seamen when they came here. They owe this country nothing except gratitude for freedom conferred through the seamen's act. This gratitude is an impelling force. They are willing to continue sailing. They want to prove to the world that free seamen are better and more reliable than bond seamen. If their willing service be rejected in favor of men whom they know to be their inferiors in skill, these seamen will feel that they are not trusted. They will find other work. They will be lost to the sea.

QUESTION OF SAFETY RAISED.

(5) It would be unsafe. The Navy was, according to reports, some 18,000 men short when the war began. Allowing for a goodly number of men with previous service in the Navy returning, these would reason-

ably be placed on the active fighting vessels—cruisers and destroyers—and the merchant vessels will be manned by Naval Reserve men. While a few of these came from the merchant service, the great majority are directly from shore life or from that Sunday sailing called yachting—men who sailed on yachts without sailing them. They are in no real sense seamen. Men can not be made into seamen in training camps on shore. Seamen are not made in that way. Other nations have tried that in the past and have suffered from the failure. Experience has taught the men sailing that, so far, the best defense against the submarine is speed in the vessel and skill in the crew.

(6) It is unnecessary. There are now more than 6,000 certificated masters and chief mates, and original licenses are being issued to third and second mates at the rate of about 70 a week.

According to the report of the Commissioner of Navigation, there are on the ocean, under the United States flag, about 2,500 vessels, sail and steam, of 100 gross tons or more. According to the report of the supervising inspector general, about 36,000 certificates have been issued to able seamen. This gives more than, or slightly above, 13 able seamen for each vessel. As a matter of fact, the average number of able seamen necessary to man these vessels would be seven. The large number of able seamen now employed on United States merchant ships arises from the fact that the shipowners have carried able seamen exclusively and have refused to carry ordinary seamen and boys.

If the vessels be manned as directed by the seamen's act, there are able seamen enough now certificated to furnish not only able seamen for existing vessels, but for all the vessels than can possibly be launched during the present year. If the boys and ordinary seamen had been carried as contemplated by law, we would now have more than 20,000 Americans on the sea partly able seamen and partly in training. The question is not are there enough officers and skilled seamen? But, are they willing to continue at sea, and are those not at sea willing to return? Are the Americans willing to come to the sea? We know that they are.

THE ORIENTAL SEAMEN.

Notwithstanding the fact that the Department of Commerce has construed the forecastle clause of the seamen's act as having no application to vessels built prior to November 4, 1915, and the housing in the old vessels is abominable, and notwithstanding the fact that the clause of the act which provides that 75 per cent of the vessel's crew in each department thereof must understand all orders has been so construed as to be inoperative and has permitted orientals and others unable to understand orders to continue sailing, yet since the seamen's act was passed the number of native Americans sailing out of Pacific ports has increased from less than 1 to more than 10 per cent of the men sailing. And out of the Atlantic ports the increase has been from 10 per cent, when the act was passed, to 25 per cent at present. We know that the

American will sail. As in the shipbuilding it is a question of wages, of treatment, of housing, and of the association to be endured. The American youth, however, will not sail with Orientals.

By order the seamen's union it was suggested to the Shipping Board that it would be possible not only to induce young men to come to the sea, but to induce men who have left the sea to return. Under the leadership of the Shipping Board the shipowners and the seamen of the Atlantic arranged for a specific wage for one year, for a bonus for going into the war zone, for the reorganization of the vessels' crews so as to require fewer able seamen and make place for young men to come and learn seamanship; it was further agreed that the shipowners, the seamen, and the Shipping Board should join in a "call to the sea," addressed to the young men and to those who have left the calling. This was perfected on August 8, 1917. The shipowners and seamen on the Pacific declared their willingness to join in the "call of the sea."

The seamen on the Lakes have been and are now willing. The shipowners, the Lake Carriers' Association, refused to cooperate, and give as their reason a fear that the men might become members of the seamen's unions. The call has not received the needed signatures and has not been sent out.

The convention of the seamen meeting in Buffalo during the first days of December unanimously adopted the following call coming from seamen to seamen:

"The Nation that proclaimed your freedom now needs your services. America is at war. Our troops are being transported over the seas. Munitions and supplies are being shipped in ever-increasing quantities to our armies in Europe. The bases are the ports of America. The battle fields are in Europe. The sea intervenes. Over it the men of the sea must sail the supply ships. A great emergency fleet is now being built. Thousands of skilled seamen, seafaring men of all capacities who left the sea in years gone by as a protest against the serfdom from which no flag then offered relief, have now an opportunity to return to their former calling, sail as free men, and serve our country.

"Your old shipmates—men who remained with the ship to win the new status for our craft—now call upon you to again stand by for duty. Your help is needed to prove that no enemy on the seas can stop the ships of the Nation whose seamen bear the responsibility of liberty.

"America has the right, a far greater right than any other nation, to call upon the seamen of all the world for service. By responding to this call now you can demonstrate your practical appreciation of freedom won."

All others being ready and willing to cooperate, surely there must be some way to induce the Lake Carriers' Association at least to forget

temporarily its absurd prejudices and to cooperate now for the benefit of the Nation.

The Shipping Board has manned the vessels controlled by it in accord with the arrangement, which is substantially in accord with the law. The shipowners have not thus far complied with this point of the agreement. If they had, we should now have about 15,000 young Americans at sea learning seamanship. For some reason it was not done. The months have been wasted on the ocean as they have been wasted on the lakes by the refusal of the lake carriers to cooperate, so that the young men sailing there could learn. As it now stands, the training school operated in Boston under authority of the Shipping Board is a necessity, and will be a success if the young men can be sent from that school to all kinds of merchant vessels, to serve as coal passers or ordinary seamen. The Department of Commerce has ample authority under existing law to reorganize the crews of all steam vessels. There can be no doubt that the owners of sailing vessels will cooperate. Thus we shall have an efficient and, gradually, an American personnel for the merchant marine during the war and after the war.

The Navy can not furnish men of sufficient skill. The system suggested will inevitably break down and will then leave the United States without seamen to carry on its needed ocean transportation, either during the war or after the war. When the war is ended the Naval Reserve men will go back to their shore employment. We shall then have vessels, no men, and very few officers. We shall again be driven from the sea commercially. We can have no sea power without national seamen. Sea power is in the seaman. Vessels are the seaman's tools, and the tools will always belong to the nation or race that can use them.

II.

FORECASTLES, THE PRISONS OF THE SEA—SELF-RESPECTING AMERICAN BOYS, BROUGHT UP IN DECENT HOMES, HAVE BEEN DRIVEN FROM OCEAN BY WRETCHED LIVING CONDITIONS—NEW LAW HALTED IN COURTS.

The share which any particular nation had in the use of and the power on the sea depended always on the number of its people who obtained their living by following sea occupations. Fishermen on the coasts, later on the banks, whalers, first in small boats along the coasts, later in large vessels following the whale or seeking him, trading in their own produce, or carrying the produce of others—these are merchant seamen. Valuable cargoes tempted others into piracy, and the merchant vessel was armed to resist the pirate. These were the early fighting vessels or men-o'-war. In all instances the men employed were seamen. Seamen were always considered a special part of the national defense.

To develop a large number of trained seamen, to foster and develop a tendency to the sea in the population, has ever been the care of statesmanship. Nations have fought over fishing grounds, not because of the fish to be caught, but the seamen to be trained in the use of those grounds. The increase in the trend to the sea has always been found to be identical with periods of national expansion, be that expansion in trade or in other directions. Any steadily decreasing trend to the sea has been a symptom of national decay. This does not mean a decay in wealth. That might be increasing while the vitality of the people was ebbing away. When, for one reason or another, the men of a nation ceased to seek the sea, and the nation had to seek its seamen from elsewhere, the decay in sea power began. If the trend from the sea was not checked and stopped, sea power passed away. The barest look into the histories of the Hansa League, of Venice or of Genoa, of Spain, or of Portugal, and of the Netherlands should convince anybody that sea power flows from the seamen.

The merchants of the Hansa League treated their seamen in such manner that the men and boys from either the united cities or their vicinity refused to serve. Desertions were punished by branding the deserter's face with a red-hot iron. Of course, desertions to some extent stopped; but so did the trend of the population to the sea. The keelhauling of the Dutch had as much to do, nay more to do, with the Dutch decay in sea power as the sea battles lost to England. Dangers and defeats never stopped the trend to the sea. It was harsh treatment, insufficient remuneration, and the feeling of failure to be able to follow the upward trend of society that checked the trend of any given people to the sea. Of course, all these things are comparative. The treatment and condition accepted as tolerable in one period will be felt as the rankest kind of injustice in another. The standard is changed.

SPAIN'S EXPERIENCE.

Spain, once all powerful on the sea, could not man the battleships which fought under her flag at Trafalgar. (Mahan, "Sea power in History.") The Spanish Armada is often said to have been overcome by the elements and the proud Phillip so declared; but Prof. James Anthony Froude in his lectures, "English Seamen in the Sixteenth Century," gives the true explanation. England was sending some of her best blood to sea, and her seamen so improved the rig and sailing qualities of their vessels that they "could work to windward with sails trimmed fore and aft." The foremast was changed into a jib boom; the aftermast into a spanker boom; fore and aft sails were put on them; the trusses were improved and the English vessels could fight under sail. "The English ships had the same superiority over the galleons which steamships have now over sailing vessels. They had twice the speed; they could lie two points nearer to the wind."

Favored by a brisk wind, they chose their own positions from which to use their guns. They had discarded the high forecastle and the high sterncastle and furnished a poor target for the slow Spanish vessels'

guns. The high freeboard of the Spanish galleons and their higher fore and after castles made them the best of targets for the English guns. It was better vessels, designed and handled by better seamen, that destroyed the Spanish armada. "It was to the superior seamanship, the superior qualities of English ships and crews, that the Spaniards attributed their defeat."

FRENCH AND ENGLISH FLEETS.

When the revolutionary wars opened the fleet of France was, in vessels, men, and guns, about equal with the English, but England could reman her vessels five or six times, while France could not do so once. France had to resort to landsmen, whom she trained in harbor until they could dismantle and rerig the vessels with remarkable speed, but after a gale at sea the vessels were like wrecks.

The English vessels might leave the harbor looking like wrecks, but after a couple of days at sea they were in the very best of trim and fitness.

For reasons so many that it would take too much space to mention them, sea power passed from those peoples. The most direct reason was the loss of seamen and failure to develop seamen of their own.

America had its full share of the world's carrying trade. The decline set in in the early fifties. The Civil War made it convenient to place the vessels under foreign flags, and much tonnage was lost, but if other false steps had not been taken and the Americans had remained at sea, vessels would have been replaced and the former status restored.

The thirteenth amendment was adopted. Slavery was abolished on land, on the sea it was continued. The seaman fought for the freedom of others; he failed to obtain it for himself. To become a seaman was to surrender all rights of citizenship, and the freedom-loving American boy refused to enter sea life. Through the crimping system the seaman was deprived of the wages earned, as he was of his freedom. The American who went to sea was compelled to live in the forecastle with men whose language he could not understand; he was compelled to accept wages upon which a family could not be sustained; the competition with all the world's derelicts set his wages, and when at sea he was compelled to do the work that the derelicts could not do. The American quit the sea and the vessels were manned by men from all the nations and all the races. When the seaman's act was passed America had practically no seamen of her own. We have very few now. We could by this time have had quite a large number of native seamen, but the act has not been given a chance to function, and the trend to the sea, which set in when the act was passed, has been checked by the failure to enforce it.

SEAMEN'S ACCOMMODATIONS.

One of the glaring evils that have kept the American from the sea is the accommodations on board vessels. They are called forecastles, and located so far forward as to interfere in the least possible way

with the cargo or passenger space. Seventy-two cubic feet per man. Twelve square feet on the floor or deck. It is usually an abominable disease-breeding place. Six feet high. 6 feet long, and 2 feet wide. "A little too large for a coffin, not large enough for a grave."

This space has come down to us from the old line-o'-battle ship. It is the space needed for slinging a hammock. Two, three, even four bunks are placed one above the other. The height between them makes it impossible to sit up in the bunks. You slide in and you slide out. The air necessarily becomes very foul, because the usual ventilation is through the door or through small round openings, which in bad weather must be closed to keep the water out. There are no provisions for cleanliness. The result is best expressed in the figure of the reports from the Surgeon General of the Marine Hospital Service. In years passed the number of men entitled to marine hospital relief were about 120,000, and the number receiving treatment was for years between 50,000 and 60,000, and these men were between the age of 18 and 45. There are very few seamen sailing before the mast above the age of 45.

In passing the seamen's act Congress provided that the space per person should be 120 cubic feet; that is, the width was increased from 2 feet to 3 feet and about 8 inches, with the further proviso that there must be at least 16 feet on the floor for each person and that there must be no more than one bunk above another. The act further provided for conveniences for keeping clean. These changes are very important in the modern steam vessel with the eternal soot, coal dust, and all the dirt and grease from the engines.

ACTION BY CONGRESS.

Congress took a law passed in March, 1897, and amended it so as to read that after the passage of the act the forecastles must be improved as above described. Congress gave the shipowners from March 4 to November 4 to comply with the act. The seamen very naturally thought that any vessels built after March 4, 1897, would be compelled to improve the forecastle. The Department of Commerce ruled that the law had no application to vessels built prior to November 4, 1915. The matter was placed before the President, who submitted the question of construction of the statute to the Atorney General. The Attorney General held that the new law applied to all vessels built after March 3, 1897. This was overruled by Judge Manton in New York. An appeal was taken to the circuit court of appeals, where the question is now under consideration.

In the meantime the old forecastle is unaltered. The dirt, the misery, and the sickness continue. No self-respecting American boy, brou[illegible] up in an American home and school, will go into such a place, especially to live there with men whose language he can not understand and whom he rightly or wrongly considers his inferiors. When the court shall have passed upon this statute and shall have given to it the construction plainly intended by Congress, the forecastles and other evils that

stand in the way of the American going to sea will pass away. One rather remarkable fact is that nearly all European nations, especially the real maritime nations, have years since passed just such laws about improved accommodations for seamen on vessels as our Congress adopted in the seamen's act.

AN ILLUSTRATION.

Perhaps an illustration might be needed to cause the reader to understand this legal tangle about the forecastle. A municipality has permitted a certain kind of building to be erected. Experience teaches that these buildings are dangerous to health and to life. The law under which the buildings were erected is amended so as to compel more space, more doors, more fire escapes. The owners of the buildings insist that such law might apply to new buildings, but that it can not be made applicable to buildings already erected. If their contention is sustained the danger to health and life continues. There has been an improvement on paper, but none in fact. The cost of renovating the forecastles is in fact insignificant. It is the peculiar superstition about the extra sacredness of vessel property that seems to stand in the way.

The very first thing to do to get the American to sea and to keep him there is to give him—not the space for accommodation on the vessel that a prisoner gets in any modern prison, but about one-third of that and some little chance to keep clean. Physical cleanliness is known to promote mental cleanliness. You are asking the seaman to keep mentally clean, and he, at least the great majority of them, really wishes to; but he is compelled to live under conditions which are conducive neither to physical nor mental cleanliness nor to health. While this and other evils with which I shall deal later are permitted to continue, we need not expect the American to come to the sea or to remain there if need should drive him there. Let us have the seamen's act enforced and we shall have seamen and seapower.

III.

CRIMP, SAILOR, AND HIS WAGES—SEAMEN'S ACT HAS HELPED TO GIVE PROTECTION AGAINST THOSE WHO PREY UPON THE INNOCENT SEAFARER, BUT ABUSES STILL EXIST—A VITAL QUESTION PENDING IN THE COURTS.

To crimp is "to decoy and detain for impressment, as sailors." There can be no crimping as long as the sailor is at all times free to quit his work while the vessel is in the harbor. The crimp decoys the victim into his house or the victim's need drives him there. The victim pawns his body for food or drink. The crimp makes arrangement with either the master or owner of the vessel to furnish sailors at a certain wage. The victim is compelled to accept the wages and go in the vessel selected for him by the crimp. He can get no other vessel. His necessity drives him.

The victim is signed on the shipping articles—shipping contract to labor on a vessel—the crimp delivers the victim and gets the advance

note or the money, and the Government through its laws and police power sees to it that the victim does not get away.

Section 2 of the seamen's act provides "that it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any person * * *." The statute then provides a criminal penalty; but recognizing that it is difficult to enforce penal laws, especially when as in the case of seamen the testimony is lost or unobtainable, because the witness has been left in some foreign country; the statute further provides a civil penalty by enacting "that the payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense in a libel suit or action for the recovery of such wages."

Workingmen on shore are compelled to organize, to strike, and to seek legislation to compel the employer to pay every week or every two weeks; the employer wants to keep the money as long as he can. He has some use for it. The bondage of the seamen makes it safe to speculate in his body—in his labor power—and the seamen had to seek for years to rid themselves of the incubus of having their wages paid before it was earned.

SAILOR'S WAGES EVAPORATED.

Prior to the enactment of the so-called White Act, an act passed through the efforts of Senator White, of California, in 1898, to improve the condition of seamen and to improve commerce, the advance paid was limited only by what the seaman might be expected to earn during the voyage. Thus, on a voyage from San Francisco to England—usually four months—the advance that the seaman was compelled to sign for was three months' pay. The seaman arrived in Liverpool with less than one month's pay after working four months. He then left Liverpool for San Francisco or Portland, Oreg., was again compelled to sign for three months' advance, to again arrive on the Pacific with less than one month's pay to take from the vessel. In neither case did he receive even one-quarter of the advance, either in money or any equivalent. The advance going from New York to England was usually one month's pay. The seaman, or the man called a seaman, arrived on the other side of the Atlantic with nothing to take from the vessel. He was compelled to go into a boarding house and again pawn his body.

Congress finally passed the law limiting the amount of "allotment to original creditor" to one month or less, and prohibited the advance altogether. Some shipowners violated the law in every way, and the prohibition against the payment of advance would have meant nothing but so much waste paper, except for the civil remedy.

Under the part of the law giving the seamen the opportunity to recover the wages regardless of and including the advance, the system

passed out of the coastwise trade, but not until the law had been tested in the Supreme Court. The court upheld the law, and in so doing used the following language in describing the advance:

"The story of the wrong done to sailors in the larger ports, not merely of this Nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless, and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

HOW THE SEAMAN WAS FLEECED.

Rapacious managing owners and masters of vessels knew well how to use the opportunity given them by the advance system. There were many managing owners of vessels who had regular contracts with the crimp to the effect that he was to pay part of the advance back to the owner for the privileges of furnishing their particular vessels with men at a specific wage. Sworn proof of this was furnished to the committees of Congress. Masters whose salaries were low felt that they had a perfect right to make what they could on the side, and they drove the sailors out of the vessel in order that they might share, first with the tailor in the wages which the deserter left behind, and then in the advance which the vessel paid to the crimp to furnish substitutes for the men driven out.

Some explanation may be needed at this point to explain the reference to the tailor. In practically all seaports there are so-called tailors who make a business of furnishing clothes to seamen. In all parts of the East this tailor is called a "bumboat man." The tailor, or bumboat man, obtains from the master the special privilege of selling clothes to the crew. The seaman is sent to that tailor to get what he needs. When the tailor has the man's signature at the bottom of a long bill, upon which but one or two items are enumerated, this bill can be filled out above the seaman's signature, and the man is ready to be driven out of the vessel. He is then driven out.

The bill is filled up to cover nearly all the wages due, the amount is divided as per agreement, the master certifies to the correctness of the deserter's tailor account, and the tailor collects when the agent of the vessel has the bill, properly certified, presented to him.

The American who had lived in an American home and attended an American school could, of course, not be induced to accept this kind of life. White men from anywhere refused to accept it, and the crews

of American vessels grew to be of a poorer and poorer quality—Greeks, Portuguese, and other South Europeans, mixed with West India Negroes—and sailed more for the money that might be made in smuggling than for the wages which they could earn and keep. Some of these men were fairly good seamen, some of them excellent seamen, and, aside from their smuggling, were decent enough men; but, of course, the American neither would nor could sail in that atmosphere. On the Pacific Chinese were employed. They had to be given a full right to run gambling tables and to smoke opium—some vessels had special rooms for this purpose. They smuggled anything from silk or opium to Chinese into this country.

The seamen's act was passed by Congress to get the American to come again to the sea. To accomplish this purpose the crimping had to be abolished. Simply to prohibit advances would lead nowhere. The system had to be made unprofitable. The managing owner, who knew all about the crimping and what an unscrupulous man might make out of it, would not continue to permit his shipmaster to break the law and pay advance if the advance had to be paid over again, and in the final instance to the seaman who had earned the money as wages. It was for such reasons that Congress prohibited the payment of all wages before they were earned, and further prohibited all allotments, except to near and dependent relatives.

A LONG-LIVED ABUSE.

Crimping, however, is a long-lived abuse, and is able to find many means to continue as long as the seaman's body belongs to the vessel. This became thoroughly understood by members of the Committee of the Merchant Marine and Fisheries, and especially by Mr. HARDY, of Texas, chairman of the subcommittee in which the seamen's bill was licked into the effective legislation for the building up of the sea power of America that it will prove itself to be when given the opportunity to effectuate.

Actually to destroy the crimping system the seaman had to be made a free man. He must be within his right, if he chooses to leave the vessel in any safe place, and he must have the right to draw at least half of the wages due him in any harbor. To prohibit advance and abolish imprisonment for desertion would not liberate the seaman in fact, unless he was permitted to collect a part of his earned wages. The seaman's physical needs would hold him to the vessel with a stronger grip than the threat of imprisonment. In a strange place, without acquaintances and unable to pawn his body for food, he could not live long enough to find some other vessel. The representatives of the shipowners, especially the foreign shipowners, who appeared before the committee, know this perfectly, and they were willing to abolish the imprisonment and the advance, but they protested most earnestly against any part payment of wages in ports.

With one-half of the wages earned and not paid being made payable in port, the seaman need not go to the tailor selected by the master;

he need not pay double or treble price for things that he wants; he will not be driven out of the vessel to make it possible for the master to collect part of the wages left behind, or for the purpose of the managing owner sharing in the advance supposedly paid to the substitutes. If no advances can be paid, and especially if any advances paid to crimps must finally be paid to the seaman, who has actually earned it as wages, the whole system must cease.

The Department of Commerce, with a fatuous twist of mind that is almost incomprehensible, insists that advance may be paid by American vessels in foreign ports, and thus compels the seaman to enter suits for the recovery of his wages under the law. Up to the present all the district courts have sustained the law and have ordered the advance repaid, but this question is now on appeal in the Circuit Court of Appeals, and we shall see if the law is understood there. If the court will hold to the letter of the law and enforce it in letter and spirit, the shipowners will no doubt take it to the Supreme Court, and then we shall have the law nailed down again. We seamen fully expect that the owner, who evidently is reimbursed for his loss in paying the cost, fees, and the attorney's fees, will carry the case to the Supreme Court on the question of constitutionality or on the question of comity between nations.

Let the La Follette seamen's act, as it is sometimes called, be enforced and the American will again become a seaman. The American shipowner will have to meet only such competition as is fair and arises from skill in management. The impossible competition which arose from antiquated navigation laws and treaties that were fundamentally unconstitutional will pass away.

IV.

ENFORCING SAFETY AT SEA—SKILLED SEAMEN ARE NECESSARY IF SHIPS AND THEIR PASSENGERS ARE TO BE ADEQUATELY PROTECTED—HOW THE LAW REGARDS THE QUESTION OF TRAINING SAILORS.

"Bear in mind, when a ship is lost the shipowner may make a profit, the owner may get more than the value of his ship; the merchant may lose nothing, but may, and very often does, get more than the value of the cargo back. In the same way the underwriter averages his losses, and, on the whole, makes a profit on the insurance of the ship out of his premium."

The above is a quotation from one of England's great statesmen, Joseph Chamberlain, of Birmingham, and the utterance came when, as president of the board of trade, he sought to stem the downward trend in skill and safety in the merchant marine of Great Britain.

Skill is that coordination of mind, eye, and hands needed to do any difficult act or thing with speed and efficiency. It is the result of training, experience, and native adaptability. Some men learn some things quickly; other men can not learn the same thing at all. Skill in seaman-

ship is never attained except by experience and native ability or adaptability. In the young man of even the greatest adaptability it is a slow and at times a painful process. It is never acquired except at sea.

Let me suggest something by way of a kind of comparison. How long will it take to make a street-bred boy from New York sufficiently expert as a horseman to break a bronco? Suppose you try to teach him by drilling him in infantry tactics, or suppose you try to teach him by permitting him to ride a wooden horse. Now, please try to understand that when a boy goes to sea it is not the bronco that is to be tamed or broken. The antics that a vessel performs in an angry sea are even more diversified than the antics of the unbroken bronco, and yet the boy going to sea must get so accustomed to the antics of the vessel and the sea that he can stand on his feet, see with his eyes, think and determine with his mind, and execute the act determined and willed. He must be inured to the sea. He must learn to understand it and to work with it or there can be no safety for either the vessel or those on board.

THREE YEARS TO MAKE A SEAMAN.

Skill in seamanship is not a matter of a few weeks of intensive training, even if part of the training is done at sea. The lowest or shortest time accepted and made part of the law of any nation is three years. This is the standard set by English, Australian, and American law. It was part of the recommendation by a Norwegian commission instructed to investigate and report, and it is the time set by the German shipowners under authority granted by German safety regulations and compensation laws.

When the shipowner was not protected by laws providing for limitation of liability to the traveler or his heirs, and when he was not, as now, covered by insurance of ship and cargo, when the loss of the argosy meant bankruptcy, he insisted upon real skill in the seaman. He then determined that four years of training was barely enough; he further insisted upon and obtained the right to reduce in rating and pay any inefficient man in accordance with his demerit.

Lack of skill in the seaman (sailor) was recognized as being dangerous to the vessel, the cargo, and passengers. It found no apologist, because all were equally interested and the shipowners had an especial interest, because his property was ever in danger. He had not, at that time, succeeded in transferring his risk—through insurance—to others, or in shedding his liability through the enactment of limitation of liability laws.

Skill necessarily presupposes a sufficient knowledge on the seaman's part of the language used by officers to understand orders without any interpreter or any explanations. There is no time for such at sea in an emergency. The safety of the vessel and hence of all on board depends on immediate obedience. Let me try to illustrate. Suppose your fire chief and his lieutenants, speaking English only, were to be given

a crew of men who could not understand English, and that the chief and his lieutenants were compelled to give their orders through an interpreter, how long would you people of New York stand that kind of fire-fighting force? The absurdity of it would at once appear, and you would all insist that the men must be able to understand all orders. And yet the law, which was supposed to compel the vessels to have at least 75 per cent of the crew capable of understanding all orders, is permitted to sleep.

This is not skill. It is not patriotism. It is not safety. We seamen pleaded for more than 20 years to have this absurdity abolished. When it was abolished on paper we thought that we should see this danger pass away. Now we shall have Americans coming to the sea. We shall have skill and efficiency at least on the deck. We shall have Americans on deck at sea.

"TITANIC" DISASTER RECALLED.

When the *Titanic* went down, and took with her a host of very wealthy and influential people, we expected to find the bereaved ones come forward to help us get laws which would make any recurrence of that kind of disaster humanly impossible. We were wrong. We heard from none of them in this country. We failed to appreciate the resourcefulness of the legal mind. The power to construe is sometimes equal to the power to legislate. Some day we shall, if we can keep the law on the books, find the way to get the law enforced. In the meantime our soldiers ought not to be sent across a submarine-infested ocean with a lot of so-called seamen who have had about as much chance to learn the duties of seamanship as the infantryman has to learn horsemanship by practicing on a wooden horse.

The world's experts, sitting on and reporting from commissions appointed by Governments, have united in treating the able seaman as the unit of efficiency and as the unit in the safe manning of vessels. First, the boy to get some little experience, then rated as ordinary seaman, then more and more knowledge and experience, until he knows the work of a seaman, and then is rated able seaman. From the brightest of these are gradually culled those who become officers. Beginning with third mate, some more experience, some selection, and a second mate is made, some more and the first mate is made, then again some more and the master is selected. Thus are skilled officers developed for the sea.

Without skill in the seamen there can be no safety in ocean travel. It was the recognition of this as one of the factors that caused the La Follette Seamen's Act to become law. This is its distinctive humanitarian feature. The seamen must be skilled. Looking over the record of losses they were found to be growing during each half decade of the last 50 years. The growth was so steady that it suggested a general underlying cause. A serious study of the passing of skill in seamanship linked the loss of life and of skill together. It was found that improved vessels, marking of channels, placing of lights, and the study

of meteorology were all good, but these things could not replace the waning skill, and the nations acted accordingly, in so far as their shipowners would permit or their power could be overcome.

Undermanning and unskilled manning of merchant vessels could not be permitted to continue. Safety at sea depends on the human element even more so than safety on shore. Whenever or wherever self-interest can be placed at the service of safety other forces or law may be dispensed with, but the shipowner, having shifted his risk, arising from the dangers of the sea to the general public, and having rid himself of liability to the traveler, was no longer vitally interested in safety. His vital interest had become the cost of operation, as distinct from safety, and law had to step in. Law itself divorced from self-interest is but a poor makeshift, but it is better than nothing.

THE QUESTION OF UNDERMANNING.

Regardless of the number of persons composing her crew, a vessel which has not enough skilled men to manage her in ordinary conditions of weather and sea without calling the lookout or the watch below is undermanned. It is not sufficient that the vessel has the skill on board; it must be at all times available. Undermanning imposes on skilled seamen inordinate toil, and endangers life and property not only in the case of the vessel undermanned but in case of other vessels. The old system of watch and watch—one-half of the crew working while the other half sleeps or rests—was born of self-interest taught by experience. It was gradually getting out of use in our vessels. Some swift reminders were sent by chance, and Congress, heeding the warning, made the age-long system of watch and watch a matter of statute law. That the law has not been respected up to the present arises from the fact that it has no help from self-interest. When one day some court shall refuse limitation of liability because the law enacted for the better protection of life at sea has been disobeyed the law will be obeyed.

With one-half of the crew on deck, their eyes accustomed to the light, seeing and understanding the situation, ready to obey the order when but half uttered, many a disaster has been avoided, thousands of lives saved. With the men in their berths, except the wheelsman and the lookout man, the men must get out of their berths, they must come from one kind of light into another. Their eyes are for the moment blinded, they are not able to obey promptly, even if skilled, and the precious first moments are lost.

This nearly always makes the difference between the vessel saved or lost—the people on the vessel saved or lost. With half the crew on deck, when the disaster occurs, the watch does what is most immediate and then leads the watch coming on deck into new light and not knowing except in a mechanical way how to obey the orders given.

No time, then, for the interpreter. Besides, he may have lost his nerve or his life. Suppose it be a fire. The question is not how to

get out of the building and into the street and to safety. The question is how to get into boats with some chance of safety. But the boats must be lowered, they must be kept on even keel in the lowering, they must be kept free from the side of the vessel in a heavy sea, and when water borne and free from the side of the vessel, the boat must be so managed that it can remain buoyant in the rough and angry sea. Such work is never done successfully except by men who know the sea, and who know how to work with it. The boy is on the living bronco instead of on the wooden horse, and you need no further information of what will happen.

Safety at sea must, however, always be cooperative. There are times when no skill can help. There may be temptations placed in the way of men sitting snugly on shore that will so darken their sense of right and wrong that a vessel may be sent out to sea so poorly constructed and equipped that she has no chance in a real gale. Self-interest used to take fairly good care that the vessels were not only well manned but that they were well built and properly equipped. The insurance has stepped in with its temptations, and law and rigid inspection are needed.

No crew can save a vessel sent to sea to be lost. And such things have happened. Those on board must then depend on boats alone, and boats must also be provided by law and enforced by honest inspection.

The most important of all safety is, however, the safety of a whole people, and if the Nation has a seacoast there can be safety to the nation only through highly skilled seamen. It was the seamen of England that protected the English people against the Armada. Carthage was only overcome by Rome when Rome obtained control of the sea. English seamen had much to do with preventing Napoleon from crossing the Channel; English seamen are guarding England to-day. German seamen, using the new sea weapon, are guarding Germany. Our shore line is long, our harbors many; stationary defenses are inadequate; and unless we shall have skilled seamen of our own our people may taste bitter fruit. Let the control over the sea pass from the white to the yellow race and humiliation and danger will some day be suffered by our people. We must have seamen of our own blood, of our own Nation, and we can not have them unless the ideals and standards nursed in American schools find expressions in sea life. This is the aim of the La Follette Seamen's Act. Before condemning it, before mutilating it, please give it some study, and your patriotism will hold your hand.

V.

Seamen's Act in Operation—Contention That it Has Equalized the Sailor's Wages and also Put the American Shipowner on a Basis of Equality With His Foreign Competitor.

"We have established a great and elaborate machinery; we have set up a complicated system under which we have pretended to supervise every shipowner, good or bad alike, and under which we have tried to make negligence, carelessness, and apathy impossible. But we have never tried to make it unprofitable."

This is another quotation from the late Joseph Chamberlain, of Birmingham, and while it is specifically directed at the gradually decreas-

ing safety measures, it is equally applicable to the controlling question in the matter of the comparative wage cost of operating American and foreign vessels—the crux of competition.

We have entered into elaborate treaties under which the several nations agree to arrest, detain, and return each other's deserting seamen; we have passed laws forbidding shipowners to pay to the seaman any of his earned wages in foreign ports; we have tried to hold the seaman to the vessel by punishments, ranging from branding with red-hot irons to imprisonment; we have tried to prevent desertions by penalizing the seaman on his return. We have done all of this and more, and with the purpose of keeping the wages as low as possible. Ocean commerce is highly competitive and legislatures and courts have in the past united with the shipowners in trying everything to accomplish the purposes outlined above. Never until the passage of the seamen's act was there any effort to equalize the wages by raising the lower to the higher and to make violations of this policy unprofitable.

The British shipowner, finding that some other European shipowners paid less wages than he could pay and yet obtain men, caused the repeal of the laws under which he was compelled to carry British seamen, and when this did not accomplish the purpose he sought and obtained the right to employ lascars, Chinese, and South African Negroes. We, here in the United States, followed his example. We lost our native seamen; he was losing his, and to no purpose, because other shipowners of other nations could and did obtain permission to do likewise. The sum of all the efforts was to drive the men of the Nordic race from the sea. The spirit of this race, together with the spread of education, made it impossible to hold them to the sea. Other races were taking their place.

The American was leaving the sea. The American boy was shunning it. Sea life was passing from our people until we had neither vessels nor seamen.

FACTORS TO BE CONSIDERED.

It is a matter of common knowledge and general agreement that the over-sea merchant marine of the United States was steadily decaying from about the time of the Civil War to the beginning of the present European war. The reasons were economic, but they were created by law. The causes for this decay have been variously stated to be:

(1) Our antiquated navigation laws.

(2) Excessive building cost of American vessels as compared with foreign vessels.

(3) Excessive cost of operation of American vessels as compared with foreign vessels.

When those who use the phrase, "Our antiquated navigation laws"—a phrase so widely disseminated and so generally used that it is assumed to need no explanation—are asked for specifications, they say, "We furnish better accommodations for our seamen than do other nations." But when our laws dealing with seamen's accommodations are placed side by side with those of England, France, Germany, and Norway we find that our laws are not as liberal to the seamen as the laws of those countries. Then they say, "We furnish a better scale of food." But when we compare the English scale of food as it

existed up to 1906 we find it identical with the scale of food on American vessels up to February 21, 1899, and that the present scale of food of the two nations is about the same. We further find that the scale of food in vessels of Norway, Denmark, Germany, and France differs very slightly from our own and that there can not be very much distinction in "the cost of food per person" in either of them.

Then it was claimed that American vessels carry more men. Comparing the same class of vessels belonging to any of these nations with similar vessels under the American flag and employed in the same trade it will be found that there is no real difference in the number of men employed and that the American vessels sometimes carry one or two men more, sometimes two or three less.

Finally, it was suggested that it was a question of wages; and this is true, in so far as it applies to vessels sailing from ports of the United States. The only difference in wages between foreign and American vessels trading between ports of other countries is in the wages of the officers, and this is not by any means an important amount.

Excepting the wages and the number of men carried, the Department of Commerce has, after careful investigation, reported that the several maritime nations are on almost perfect equality.

Summing up the testimony of the shipowners as it has been given to the committees of Congress and to the Merchant Marine Commission, we find that some of the witnesses testified that the cost of an American vessel is about 33 per cent higher; others claimed that it is 50 per cent higher. One of these contentions is as correct as the other. If an American-built vessel costs $900,000, the claim is made that it can be built on the Clyde for $600,000. This would make the differential about 33 per cent; but if the vessel were built on the Clyde at $600,000, and the same vessel would $900,000 if built in an American yard, it would be correct to say that the difference is 50 per cent.

Of course, the more expensive vessel carries a financial burden throughout her normal life—that is, in proportion to her higher original cost. Given 6 per cent interest on money invested, 6 per cent insurance, and 5 per cent depreciation, if the vessel costs $300,000 more, she will have to earn annually about $50,000 more than the vessel that costs $300,000 less before she can begin to pay dividends.

The origin of this difference is in the monopoly of the American shipbuilder. The cure is free ships. Let the shipowner buy his vessel where he can buy it cheapest, and sail it where he can make the most money. The emergency-shipping act furnished a remedy, though it is not a complete one. In order to make it complete those vessels so registered must be admitted to the coastwise trade. When this is done the cost of construction will be equalized, and the privilege of participating in the coastal and the intercoastal trade will be such as to induce foreign vessels to come under the American flag.

THE COST OF OPERATION.

Aside from the difference in operating cost arising from the initial building cost—interest on money invested, insurance, and depreciation—the cost of operation is in taxes, port dues, fees for services by Government officials, fuel, lubricating oil, waste, repairs, food for the crew, and wages.

Let us assume that two vessels, one under Belgian, the other under American flag, are trading between Antwerp and Boston. These vessels will buy their supplies in either of the two places, where they can be bought cheapest. The same situation exists between San Francisco and Sydney, or between Puget Sound and Japan, so that the only difference is in the wage cost, and we have only to deal with the question of wages.

The wages of the seamen have been and are now the going wages of the ports of shipment. The wages of the port of shipment are very largely determined by the wage level of the country tributary to the port in question, modified, if at all, by the wages of the port to which the vessel is bound.

The United States is a high-wage country, and the wages paid here are higher than in other countries, except in New Zealand and Australia. Vessels, regardless of their flag, if in the same or similar trade and shipping their men in any port in the world, *pay* substantially the *same wages for the same kind of work*, so that the Boston wage rate is paid by the Norwegian, the English, or the French, if they hire their men in Boston; the Liverpool wage rate is paid by the Norwegian, French, or American, if they hire their men in Liverpool.

This has been so clearly understood that in 1884 the Congress of the United States made it the basis of an act "to remove certain burdens on the American merchant marine and encourage the American foreign-carrying trade, and for other purposes."

One of the main features of this act was to permit the American shipowner to discharge the crew hired in an American port, to hire another crew in the same port with his competitor, to come to the United States and go back to a foreign port without reshipping in the United States, and thus get away from the American wage rate. This was an effort to equalize the cost by leveling the American wage down to the rate paid by the competitor. The act was approved on June 26, 1884, and was enacted upon petition from the American shipowners. It is still the law.

EFFECT OF THE LAW.

This law resulted in equalizing the wage cost of American and foreign vessels trading between foreign ports. It, however, failed of its purpose in American ports—first, because it contemplated and provided for the imprisonment of seamen coming on an American ship from a foreign country to the home port of the vessel, an innovation contrary to the time-honored conceptions of maritime law; second, because this innovation found no sympathy either from the judges, the lawyers, or the public; thirdly, it had the entire trend of American life against it. Its chief result was to increase the drift from the sea on the part of Americans.

The imprisonment of seamen for leaving American vessels in American ports was abolished by the act of December 21, 1898. From that time the seamen had a right to quit; they could not be held against their will, unless they were Chinese, who were prevented by the exclusion act from coming on shore, and this gave to the vessels of the Pacific Mail and to the Dollar vessels engaged in the Oriental trade an advantage above all other vessels—even over the Japanese vessels—in the wage cost of operation. These vessels shipped their men in Hong-

kong at about $15 Mexican per month; the Japanese shipped their men in Japan, paying 25 yen per month.

The differential in wages against the American vessel continued, and it ranged from 20 per cent in British ports to 30 or 40 per cent in some Baltic and Mediterranean ports, and then rose to more than 200 per cent in ports of India or China. These facts are testified to by the shipowners and their spokesmen.

Taken together with the difference in the cost of construction, the difference in wages was fatal. The American ship could not compete. To overcome these handicaps, the American shipowner was exempted from taxation of floating property, from payment of fees levied in the enforcement of the navigation laws, and was further permitted to disregard any safety line in loading. He can now load his vessels to any depth he thinks proper.

He can carry as much of a deck load as he may think safe. There are no laws restraining him. He has shed practically all liability to traveler and shipper through limitation of shipowners' liability, which has been reduced to the "freight money pending" and the income from sale of the wreck. While this is conditioned on having an efficient crew, he escapes by organizing a separate corporation for each vessel, so that when the vessel is lost the corporation has no assets.

He was permitted and encouraged to obtain and employ the cheapest men that could be found. With the exception of the licensed officers, he could and did disregard any question of skill or experience or even of a knowledge of the language of the officers, in the men employed. Experience, age, nationality, and race were disregarded to obtain the cheapest men, and yet the wage cost of operation continued against the American vessel. This had its origin in the wage level on shore and in treaties with other countries.

TREATIES WITH OTHER NATIONS.

In treaties entered into with other maritime nations we had agreed mutually to arrest, detain, and surrender seamen who might desert or refuse to continue to labor in our high-wage ports under contracts which they had signed in low-wage ports. These treaties were further assisted by statutes, enforceable upon demand made by the consul of the nation to which the vessel belonged. When such demand was made we used our peace officers to hunt down the deserter and to deliver him back. In other words, we used our police power to keep the wage rate of our competitors below that of our own. He hired his men in the cheapest wage ports and compelled them to stay by their contracts in our high-wage ports, thus gaining an advantage which enabled him to drive the American flag from the ocean.

To assist in meeting this condition Congress passed the laws of June 26, 1884, of June 19, 1886, and the mail-subsidy act, but these laws were not sufficient. American money went into foreign vessels, and because "the heart of man is with his treasure" its interest was to prevent any real change, except such as could be met by other nations without increasing their wage cost.

But this war has taught us many things, and it has brought most of the American-owned vessels operated under foreign flags back under the American registry. The vessel could earn as much money and it was safer. Where will they go when the war is over and reasonably

normal times return? That is the question which is being considered by men who have not made themselves properly acquainted either with the causes of the decay of our shipping or who have not taken the time to study and understand the seamen's act. The American was driven from the sea because of the difference in the cost of operation between American and foreign vessels. If the difference can be overcome the vessels will remain under American registry; if not, the vessels will pass to those who can operate them more cheaply and efficiently. The remedy is in the La Follette Seamen's Act.

This act provides for the abrogation of the treaties and the repeal of the laws under which this country served as the slave catcher for shipowners of other nations. It provides in ports of call for the payment of one-half of the wages earned, in order that the seaman may have the means with which to exercise and protect his new freedom. This act abolishes the ancient status.

In reshipping her men the foreign vessel comes under the same law as American vessels, which law prohibits any payment of wages before they have been earned, a standard of efficiency is imposed upon men shipping as able seamen (part of deck or navigating crew), and the law further provides that in all vessels of more than 100 gross tons leaving ports of the United States at least 75 per cent of the crew in each department of the vessel must be able to understand any orders given by the officers of such vessel.

Foreign vessels coming to ports of the United States will thus be compelled, if their crews shall quit them, to hire men of the same skill and under the same law as men are hired by American vessels. As a result the wages paid by them will be the same.

This is an effort to equalise the wage cost by permitting the economic law of wages to level foreign wages up to the rates paid in our ports.

Of course, the struggle against such legislation was bitter and it is by no means ended.

EXECUTION OF THE LAW.

The Department of Commerce is authorized and instructed to make rules for the enforcement of some of the most important sections of this act. Of course, the drafting of these rules is done by the Bureau of Navigation and the Bureau of Inspection, subject to approval by the Secretary of Commerce.

The department whittled at the forecastle clause. Through the intervention of the President it went to the Attorney-General and then to the courts, where it yet remains. It proceeded to whittle at the crimping clause. The district courts gave a construction against crimping, the court of appeal, quoting the department, gave a construction in its favor; we hope to get it to the Supreme Court, but can not tell. One court holds that under the law the seaman must be paid half of the wages earned or due and not collected; others that half of all wages earned must remain with the vessel to induce the seaman to remain with the vessel. Prevention of desertion is destructive of equalization and contrary to the purpose of Congress in passing the bill. It would seem too plain for discussion that Congress intended that the seaman should desert until wages were equal and desertion stopped, because there was nothing to induce the seaman to desert. If this was not the purpose, why abrogate the treaties?

There can be no fair competition without equal wage cost. There can be no equalization of the wage cost unless the seaman is free. Not simply legally free but economically free, by being permitted to draw a part of his wages in any port. Equalization will, however, fail if it stops at our own ports. But it will not; it can not, if it be permitted to operate. The same selfish instinct that causes the seaman to desert in a high-wage port will compel the shipowner to pay, if going to a high-wage port, such wages as will induce the seaman to remain voluntarily by the vessel. But this means New York wages in Liverpool and to all vessels, regardless of where the vessel is bound. This is exactly what has taken place. First equalization in our ports, then an increase in British ports to the American standard.

Some will say that this is the war. They will be entirely wrong. The war began in August, 1914. There was no change in seamen's wages until the seamen's act got into force in foreign vessels, and this was not until August, 1916. The last men arrested under the old laws and expiring treaties were arrested at Norfolk, and the vessel was compelled to let them go again because she could not get to sea before the treaties were dead. Just as soon as the seaman was free to quit his vessel he did so, and equalization came with a rush. For the first time in 60 years the American shipowner was on equality with his foreign competitor.

Within the last six months there have been strong representations from foreign Governments against the seamen's act. It was claimed that the operation of the act interfered seriously with war efficiency. The seamen were deserting and vessels were delayed, so it was alleged. Upon inquiry it was found that the men were deserting, but they promptly signed on again in other vessels going into war zone, and there was no delay that was not readily cured by paying the wages of the port. The complaining Governments were informed that the remedy was in their own hands. If the seamen were paid the wages of the port, they remained with either the same vessel or shipped on some other vessel. Pay to them the American wage and there evidently will be no trouble. The most important of them has taken this advice.

The wages out of English ports are now the same as from Atlantic American ports. There are no longer any desertions, except from vessels which have been away from England so long that they are not being paid the new English rate. Let the seamen's act be understood and enforced and there will be no difference in the wages of seamen, and there will be no desertions except of a few individuals who, for some reason, can not get along in that particular vessel, while they can get along in any other vessel. The American man and the American dollar will both come to the sea and the vessels now built will remain under our own flag.

To accomplish this the La Follette seamen's act must be enforced. The act was passed to remedy serious national and personal evils; it is highly remedial and it is entitled to be so construed that it will effectuate. The whittling process must be stopped and reversed. The seamen are patient. Their life has taught them to wait and hope. Their hope is in the Supreme Court. They all, or nearly all, feel that, when properly presented, the act will stand the test in that court.

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65TH CONGRESS, 2d Session | SENATE | DOCUMENT No. 228

AMERICAN SEA POWER AND THE SEAMEN'S ACT

ARTICLE ON THE

AMERICAN SEA POWER AND THE SEAMEN'S ACT

By

ANDREW FURUSETH

PRESIDENT INTERNATIONAL SEAMEN'S UNION

PRESENTED BY MR. FLETCHER

APRIL 16, 1918.—Referred to the Committee on Printing

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

REPORTED BY MR. SMITH OF ARIZONA.

IN THE SENATE OF THE UNITED STATES,
May 28, 1918.

Resolved, That the manuscript submitted by the Senator from Florida [Mr. Fletcher] on April 16, 1918, entitled "American Sea Power and the Seamen's Act," by Andrew Furuseth, president of the International Seamen's Union of America, be printed as a Senate document.

Attest:

JAMES M. BAKER, *Secretary.*
By PETER M. WILSON, *Chief Clerk.*

AMERICAN SEA POWER AND THE SEAMEN'S ACT.

The seamen's act is strongly contested by Governments of foreign nations, who have made urgent appeals to our Government to suspend or at least modify some of its to them most irksome provisions. Our Government has, according to report, answered that the remedy is in their own hands. Pay the same wages as that paid in American ports and give to the men such reasonable treatment as will induce the men to remain with their vessels and the desertions will practically cease.

The struggle has shifted to the American courts. Foreign shipowners or, in some instances, foreign Governments are employing American attorneys and are contesting the act not only in the district courts but in all appellate courts. British interests or the British Government is employing the law firm of Frederick C. Coudert, Howard Thayer Kingsbury, who appears for the British consuls as amicus curiæ. The seamen respectfully request, through the undersigned, that the following be made into a Senate document.

Respectfully submitted.

ANDREW FURUSETH,
President International Seamen's Union of America.

AMERICAN SEA POWER AND THE SEAMEN'S ACT.

Sea power is in the seamen; vessels are the tools of seamen; tools ultimately belong to the races or nations who can use them.

The histories of the Hansa League, of Venice and Genoa, of Spain and Portugal, of The Netherlands, and of England need but to be mentioned in order that this may be appreciated to the fullest extent.

Sea power was with the Norsemen until the black plague depopulated those countries. It passed from those countries to other nations who could furnish men. The nations in turn kept it as long as they could furnish the men from their own people. When they had to seek men elsewhere the tools of the seamen—the vessels—went to the people from whom the men came.

Spain, once all powerful on the sea, could not man the battleships which fought under her flag at Trafalgar (Mahan, Sea Power in History). The Spanish Armada is often said to have been overcome by the elements, and the proud Philip so declared; but Prof. James Anthony Froude in his lectures, "English Seamen in the Sixteenth Century," gives the true explanation. England was sending some of her best blood to sea, and her seamen so improved the rig and sailing qualities of their vessels that they "could work to windward with sails trimmed fore and aft." The foremast was changed into a jib boom; the aftermast into a spanker boom; fore and aft sails were put on them; the trusses were improved and the English vessels could fight under sail. "The English ships had the same superiority over the galleons which steamers have now over sailing vessels. They had twice the speed; they could lie two points nearer to the wind." Favored by a brisk wind they chose their own positions from which to use their guns. They had discarded the high forecastle and the high stern castle, and furnished a poor target for the slow Spanish vessels' guns. The high freeboard of the Spanish galleons and their higher fore and after castles made them the best of targets for the English guns. It was better vessels designed and handled by better seamen that destroyed the Spanish Armada. "It was to the superior seamanship, the superior qualities of English ships and crews, that the Spaniards attributed their defeat" (p. 4, English Seamen of the Sixteenth Century).

When the revolutionary wars opened the fleet of France was, in vessels, men and guns, about equal with the English; but England could reman her vessels five or six times, while France could not do so once. France had to resort to landsmen, whom she trained in harbor until they could dismantle and rerig the vessels with remarkable speed; but after a gale at sea the vessels were like wrecks. (Mahan, Sea Power in History.)

The English vessels might leave the harbor looking like wrecks, but after a couple of days at sea they were in the very best of trim and fitness. (Mahan, Sea Power in History.)

When the seamen's act was passed our Navy was short of men to the number of some 18,000. The shortage has increased with the launching of each new vessel. The men now in the Navy come from

the farms. After proper training for a year or more they became useful, after two years' training they become really valuable, and in two years more they go out from the Navy and from the sea.

The number of Americans, native or naturalized, in the merchant marine is negligible. They are mostly officers. The men to man the Navy can not come from the merchant marine in sufficient numbers to even furnish the first quota, not to speak of filling up the wastage from disease and war.

The American boy shunned the sea, the American man left it again, if need had driven him there. America was and is yet without seamen—without sea power. During the hearings held by a subcommittee of the Senate Committee on Commerce, Mr. Brittain, secretary of an Atlantic ship owners' association, gave the following testimony:

Senator CRAWFORD. Can you get deck hands for $15 a month?

Mr. BRITTAIN. Little boys about 15 or 16 years of age. I might make one remark in regard to the nationality of the deck hands. The Norwegian is about pretty well eliminated, just beginning to be eliminated as a seaman.

Senator BURTON. What do you mean, from the sea, generally?

Mr. BRITTAIN. He has exhausted himself. We have exhausted that source of supply. I was talking to our seamen the other day and was very much surprised to find that they are almost wholly Slavs from Trieste, Austria, and from the Balkan States. It looks as if that hardy Germanic and Scandinavian race is about exhausted. Just as in the city of New York to-day the Irish have been eliminated.

We have sucked Ireland dry: so far as the sea is concerned we have sucked Scandinavia dry—that is, Norway, Sweden, and Denmark—and now we are falling back on the Balkan States. Even the British is decreasing. I noticed in the last report here 18,000 additional Lascars in the British mercantile marine (p. 414).

On pages 36, 37, and 38 of his report for the fiscal year ending June 30, 1916, the Commissioner of Navigation reports upon the number of vessels and men under the American flag as follows:

On June 30, 1915, there were 26,701 documented merchant vessels of the United States of 8,389,429 gross tons and 1,556 yachts of 97,902 gross tons. These vessels in detail with the crews of each, excluding masters, were printed in the list of merchant vessels for 1915. Of the total, 3,281 were vessels or yachts employed on the ocean, 2,800 were employed on the Great Lakes, and 22,176 were employed on rivers, sounds, bays, and harbors, or were less than 100 gross tons, and accordingly employed usually near the shore. The number of these vessels, classed as to propelling power, and the number of men required to man them were as follows:

	Seagoing.		Great Lakes.		All other.		Total.	
	Vessels.	Crew.	Vessels.	Crew.	Vessels.	Crew.	Vessels.	Crew.
Merchant vessels:								
Sail	1,364	10,507	220	1,281	4,282	14,207	5,866	25,995
Steam	1,178	41,041	1,615	21,061	4,139	37,617	6,932	99,719
Motor	45	521	733	1,440	8,218	19,504	8,996	21,465
Unrigged					[1] 4,887	4,054	4,887	4,954
Total	2,587	52,069	2,568	23,782	21,546	76,282	26,701	152,133
Yachts:								
Sail	112	734	17	46	70	247	199	1,027
Steam	207	2,808	75	131	26	492	308	3,426
Motor	375	1,467	140	276	509	1,288	1,024	3,031
Unrigged					[2] 25	47	25	47
Total	694	5,004	232	453	630	2,074	1,556	7,531
Grand total	3,281	57,073	2,800	24,235	22,176	78,356	28,257	159,664

[1] This total embraces all unrigged vessels without regard to the waters on which they navigate.
[2] This total embraces all house-boats without regard to the waters on which they navigate.

To these totals should be added, of course, one master for each vessel, or a grand total, including masters, of 187,921 officers and men.

Of this total, however, seagoing vessels and yachts afford chances of employment for only 57,073 officers and men and 3,281 masters, or 60,354 in all. This number is, in some respects, a fairer figure than the total for comparison with the British and German figures, for virtually all marine employment in the United Kingdom is on salt water and nearly all German employment is also on the sea or the Baltic, though the German part of Rhine navigation resembles that on the Hudson River. With the American figures it should be borne in mind that when the warships provided in the naval appropriation act of 1916 are completed, the American Navy will require about 77,000 enlisted men. At present there are about 55,000 enlisted men in the American Navy.

The commissioner recognizes that these figures are of very little value for the purpose of estimating the number of real seamen. The "All Others" will have to be eliminated at the very beginning as including no seamen. Even the remaining—"Seagoing" and "Great Lakes"—is badly padded, because the "Seagoing" includes barges, which rarely have more than one and never more than two real seamen—that is, men inured to the sea.

In the "Great Lakes" are included all kinds of vessels regardless of their tonnage or employment.

For the purpose of obtaining some fairly reliable estimate of the number of able seamen (18 months' or more experience) that would be needed under the seamen's act, a report was made to the Senators and Members of Congress whose special duty it was to report upon the bill. The report was made from the list of merchant vessels and corrected from personal knowledge of men who were exceptionally well acquainted with lake shipping. It was further checked up by the use of the so-called lake register.

American vessels on the Great Lakes.

[Exclusive of harbor craft, which do not leave port.]

	Number of vessels.	Total number of men in deck crews, exclusive of licensed officers.
Freight steamers	746	5,733
Passenger steamers	83	966
Car ferries (most of which carry passengers)	24	249
Total steamers	853	6,948
Yachts	58	116
Schooners and barges	272	1,194
Total steam and sail vessels of all classes	1,183	8,258

Harbor tugs, which sometimes go outside the harbor entrance to pick up a tow, a few very small steamers which occasionally go outside a very short distance, fish and dredge tugs, and motor boats, of the kind that go outside harbors, total approximately 539, and would employ, in addition to the master, about 550 men on deck.

On page 38 the report has a table of "ordinary seamen" and "able seamen" registered by the shipping offices of the Lake Carriers' Association. The table gives 6,767 ordinary seamen (less than 18 months' experience), of which 4,744 are Americans. The number of "able seamen" as given is 6,549, of which 3,193 are reported as American. The table is given to indicate the nationality of the men employed on the Great Lakes.

On page 37 the commissioner reports as follows upon the number of native and naturalized Americans on seagoing merchant vessels:

NATIONALITY OF CREWS.

The statements made show the number of officers and men required on American merchant vessels and yachts. The men actually serving in various capacities on board change, of course, from time to time, and under ordinary conditions a considerable number are ashore, temporarily out of employment, but during the European war this number has been unusually small. The nationality of those who man the American merchant marine is a matter of concern more in its relation to the national defense than in its relation to the growth of the merchant marine. American ocean steamers in the table above number 1,178, with 41,041 officers and crew. During the three months of May, June, and July, 1916, shipping commissioners under instructions analyzed the actual crew lists of the larger steamships, numbering 433, of 1,520,176 gross tons, or over half the total tonnage, with the following results:

	American born.	American naturalized.	British.	Scandinavian.	Spanish.	French.	Italian.	Russian and Finnish.	Portuguese.	German and Austrian.	Asiatic.	Others.	Total.
Deck department..	1,511	919	346	1,153	166	19	160	443	87	340	33	630	5,807
Engine department	2,579	852	682	480	2,026	8	40	232	191	431	74	818	8,413
Stewards, miscellaneous.....	2,602	715	1,824	199	208	28	82	40	54	270	103	655	6,780
Total.....	6,692	2,486	2,852	1,832	2,400	55	282	715	342	1,041	210	2,103	21,010

Americans, born or naturalized, number 9,178, or 45 per cent of the total. Of these the largest number was employed in the steward's department, due to the fact that colored waiters are employed in considerable number by some of the main coastwise steamship lines. The number of Americans employed in the deck department is the smallest. The special qualities of eye and nerve called into constant play from the seamen in the days of sailing vessels are seldom invoked in the deck department of the modern steamship, while they are in great demand at high rates of pay in the erection of steel "sky scrapers" in all the larger American cities. The change in the nature of employment on shipboard and relatively more desirable employment ashore, conditions which legislation can not well alter, have turned Americans from the sea to their advantage as individuals. The Spaniards are employed almost wholly in the engine and fire rooms.

The vessels here reported upon would have three licensed officers each, exclusive of the master. They would probably have an average deck crew, exclusive of licensed officers, of 10 sailors, which indicates that very few of the men before the mast are either native or naturalized Americans.

The "crew" includes, of course, the men and women (there is quite a number of women) serving in the steward's department. The 81,308 seamen in the seagoing and the Great Lakes will therefore have to be considerably reduced when there is a discussion about men available for the Navy.

Then they must be further reduced by eliminating those who are not subject to draft or who are physically unfit. But to the number remaining there can be safely added quite a large number who, while they are not subject to draft, will volunteer. The enactment of the seamen's law will bring a goodly number of these.

But allowing for all such, there is no chance of getting from the merchant marine as now manned the necessary men to man and then reman the fighting Navy.

These facts were thoroughly appreciated by the legislators. They sought to provide national seamen for the national emergencies which may arise. These are some of the thoughts that prompted the legislators to pass the seamen's act:

The figures of the Commissioner of Navigation are inclusive of the officers.

In July, 1917, the seamen's union took a nationality census of its membership.

It is admitted by all that ships and seamen are of supreme importance in this war, and we submit the following table of nationalities of seamen on American vessels, and the following explanation, for serious consideration.

The table on page 11 is made up from the records of the districts of the seamen's union as they were on July 15, 1917—the Pacific, the Lakes, the Atlantic, and Gulf. Each district has three divisions—sailors; firemen; cooks and stewards; or deck department; engine department; steward's department. Licensed officers are not members. It was provided with substantially the same explanations as here given, for the use of the Committee on the Merchant Marine and Fisheries.

Attention is called to the fact that on the Pacific nine-tenths of those actually sailing are members and that therefore the total number of men employed will be about 13,919 in place of 12,527.

On the Great Lakes the organization has about 50 per cent, so that the total number employed will be about 19,456 instead of 9,728.

On the Atlantic sailors are 70 per cent organized and the number of sailors employed there should therefore be about 11,365, instead of 7,956. The firemen being 50 per cent organized there will be employed about 13,134, instead of 6,567. The cooks and stewards being 60 per cent organized, we have about 9,713 instead of 5,629.

The total number of men employed in the lake and seagoing vessels under the American flag will, with the percentage outside of the union included, be about 67,600, instead of the 42,400 given in the table. If the percentage of Americans found amongst the organized seamen were to apply to those not in the organization, there should be about 19,260 Americans among the 67,600, but this would be placing the figure too high. The number of foreign born among the lake men who are not in the union is greater than among those organized—the Lakes are safe from submarines.

The number of sailors including the unorganized should be about 27,250 (using round figures). Allowing the same percentage of native Americans among the unorganized as are found among the organized, the number should be 6,300. We are inclined to think this figure too large, though there has been a very marked increase in the number of native Americans going to sea as sailors in the last three years. The total number of Germans employed is given in the table as 3,721. Allowing about the same percentage of Germans among the unorganized as are found among the organized the number should be 5,544, but we believe that this is too large and that there

are about 5,000 Germans now sailing under the American flag. The number sailing in the stewards' department are occupying the most skilled positions—cooks, bakers, and butchers.

The combined number of sailors born in Holland, Denmark, Sweden, and Norway (neutrals) is shown by the table to be 7,883 out of a total of 18,864. Allowing for the same percentage among those not in the union the numbers will be about 10,800 out of 27,250. These men are practically all able seamen of more than three years' experience and it would not be an exaggeration to say that these four nationalities constitute 50 per cent of the number of trained sailors in our merchant marine.

Nationality.	The Pacific: About 90 per cent organized; sailors practically all A. B.'s.				The Great Lakes: About 50 per cent organized; sailors are in the majority A. B.'s, a minority ordinary seamen.				The Atlantic: Sailors mostly A. B.'s; about 70 per cent organized, firemen 50 per cent, cooks 60 per cent organized.				Total.			Grand total.
	Sailors.	Firemen.	Cooks.	Total.	Sailors.	Firemen.	Cooks.	Total.	Sailors.	Firemen.	Cooks.	Total.	Sailors.	Firemen.	Cooks.	
Argentina			5	5					1	16		17	1	16	5	22
Austria	32	47	59	138	69	103	7	179	102	192	58	352	203	342	124	669
Belgium	12	26	17	55		21	1	22		119	32	151	12	166	50	228
British	651	352	797	1,800	614	926	135	1,675	550	709	2,152	3,391	1,795	1,987	3,084	6,866
Bulgaria			1	1		1		1	2			2	2	1	1	4
Chili		9	32	41					2	32		34	2	41	32	75
Cuba											9	9			9	9
Denmark	444	50	88	582	98	48	9	155	650	199	102	951	1,192	297	199	1,688
Finland	808	53	21	882		62		62		187		187	808	302	21	1,131
France	34	5	21	60		8	1	9	30		42	72	64	13	64	141
Germany	841	221	302	1,364	243	294	33	570	776	587	424	1,787	1,860	1,102	759	3,721
Greece	46	127	15	188		81	1	82	147	300	24	471	193	508	40	741
Holland	98	16	34	148	39	16	4	59	225	104	152	481	362	136	190	688
Italy	15	9	31	55	56	16	3	75	76		70	146	147	25	104	276
Luxemburg	2			2									2			2
Mexico	4	10	53	67		1		1	2			2	6	11	53	70
Norway	1,397	275	128	1,800	621	179	42	842	1,636	742	66	2,444	3,654	1,196	236	5,086
Portugal	2	5	53	60		1	1	1	36	512	9	557	38	517	63	618
Roumania	2	5		7		5		5	2			2	4	10		14
Russia	415	50	17	482	260	138	16	414	1,140	191	47	1,378	1,815	379	80	2,274
South America, not specified	37			37							45	45	37		45	82
Spain	13	150	89	252		34	1	35	110	610	362	1,082	123	794	452	1,369
Sweden	1,261	225	71	1,557	287	230	19	536	1,127	798	62	1,987	2,675	1,253	152	4,080
Switzerland	19	6	26	51		12		12	30		40	70	49	18	66	133
Turkey	7	20	3	30		3		3	5	19		24	12	42	3	57
United States	529	1,350	910	2,789	1,910	2,234	799	4,943	1,327	1,250	1,910	4,487	3,766	4,834	3,619	12,219
Others			74	74	42	4	1	47			23	23	42	4	98	144
Totals	6,669	3,011	2,847	12,527	4,239	4,416	1,073	9,728	7,956	6,367	5,629	20,152	18,864	13,991	9,549	42,407

The number of Spaniards, as found in the table, is 1,369, of whom 794 are credited to the engine department. It is, however, a matter of common knowledge that Spaniards and Spanish-speaking South Americans constitute more than 50 per cent of the total number of firemen on the Atlantic. They object to the language clause of the seamen's act, and are, to a large extent, organized under the I. W. W. Comparatively few of them can understand any English and they make no effort to learn.

SAFETY OF LIFE AT SEA.

Committee hearings and other investigations demonstrated that skill was passing from the sea. In spite of the improvements in vessel architecture, the largely perfected charting of the ocean and its currents, the increased knowledge of the air and its currents, and the improved light service at the entrance of harbors and on dangerous shoals, the increase in the loss of life at sea had been steadily growing.

This was illustrated to the legislators by the following table, which was taken from disasters published in newspapers from 1860 to 1914:

Modern methods of ship construction do not and can not overcome the necessity for skill in the men who handle and care for the ships. As seamanship has diminished, disasters have multiplied, despite all improvements in shipbuilding. An investigation into the loss of passenger ships since 1860 proves this beyond all doubt. Divided into periods of five years, the figures show a loss of life as follows:

	Lives lost.
1860 to 1864, inclusive, 5 years	1,018
1865 to 1869, inclusive, 5 years	1,838
1870 to 1874, inclusive, 5 years	2,302
1875 to 1879, inclusive, 5 years	2,570
1880 to 1884, inclusive, 5 years	2,570
1885 to 1889, inclusive, 5 years	2,648
1890 to 1894, inclusive, 5 years	2,654
1895 to 1899, inclusive, 5 years	2,658
1900 to 1904, inclusive, 5 years	3,165
1905 to 1909, inclusive, 5 years	4,382
1910 to 1914, 4 years and 5 months	5,445
Total lives lost	31,300

The figures given were obtained by a careful investigation and search through the files in the Congressional Library at the National Capital. It may be claimed, perhaps, that the data for the earlier periods is possibly not entirely complete, but that can also be said of the later years. It is practically impossible to get even an approximately correct list of lives lost on cargo vessels during the periods mentioned, and losses on such vessels are therefore not included.

The above is taken from a document originally printed in the Coast Seamen's Journal and reprinted by order of the Senate Committee on Commerce.

The safety of the traveling public was another thought that prompted the passage of the seamen's act.

THE DECAYING MERCHANT MARINE AND THE CAUSE.

The hearings demonstrated further that the real reasons for the decay of the merchant marine were economic. It had its main origin in the law and especially in the treaties and conventions with other

nations. Through these there arose the conditions which made competition with the ships of other nations practically impossible.

The charge that American vessels furnished larger quarters for the men, that the men on American vessels were better fed, and that American vessels carried more men were found to have no real foundation in fact; but it was plainly shown that the American vessels were compelled to pay a higher wage rate; 20 per cent higher than the English; 25 to 30 per cent higher than on vessels sailing from continental ports; and up to 300 per cent higher than the wages paid in ports of the Orient. It was found that Congress had once before sought for means to equalize the difference in wage cost, and thus make competition with vessels of other nations possible. On June 26, 1884, an act was approved, section 20 of which authorized the master of any vessel in the foreign trade to engage men in any foreign port, to bring such men to American ports and back to a foreign port without reshipping them in the United States, and thus get away from the American wage rate.

The difference arose from simple economic facts. The United States is a high-wage country. The wages of the seamen depend upon the port in which the seaman is hired. The wages of the port are largely determined by the wage rate of the country tributary thereto. The wages of the port are the same to all vessels without regard to nationality if they hire or engage their seamen there. These are facts now admitted by all.

The vessels belonging to foreign nations naturally engaged their men either in their own ports or in ports where men could be obtained at a still lower wage. Thus English, German, and Norwegian vessels hired men in ports of the Orient. The foreign vessels came to our ports with men at the lowest wage that was paid in any part of the world, and under our treaties we were compelled to prevent these men from deserting. We agreed that we would arrest, detain, and surrender deserters back to their ships, and thus we used our police power to keep the expenses of our competitors so much below our own that we were driven from the ocean. The natural instinct of the seamen was to desert and try to obtain the higher wage of the port; but our law and the fear of recapture kept the men by their vessels in sufficient number to maintain the wage difference.

Congress believed that if the men were made free they would respond to the instinctive desire for better wages. If the men were furnished with the means of living until they could ship in some other vessel, they would be still more ready to desert, and if the conditions of engagement and the standards of skill necessary to improve safety were provided alike for all vessels leaving ports of the United States, the wages on all vessels so leaving would be the same.

WHAT THE TREATIES PROVIDED.

The seamen's act is not enforced—it is meeting determined opposition from foreign shipowners and it suffers from the opposition of our own Department of Commerce and the misunderstanding of our own courts; but to the extent that it is permitted to operate, it is equalizing the wages in all vessels leaving American ports; especially is this so on the Atlantic seaboard. The seamen of Japan are not making any use of the law up to the present; but it has been in full force only about one year, and the Japanese seamen are waiting to

see how it acts with men of the Aryan race before they begin to make such use of the law as they fully know they can. It was further expected by the legislators that the equalization in wage cost would not stop in ports of the United States. The same instinct that would cause the seamen to quit their vessels to get higher pay would cause foreign shipowners to so pay and so treat their men that the men would remain in their vessels voluntarily, and so there would automatically come a practical equality in the wage cost of operating merchant vessels throughout the world. No one who has studied the law has any doubt that this will be the result if the law is given a fair chance. This, however, can not be absolutely demonstrated until the war is ended. These were some more of the thoughts that prompted the passage of the law. The following excerpt from the treaty with France is given as an illustration of what these treaties were:

The respective consuls general, vice consuls, or consular agents, may arrest the officers, sailors, or other persons making part of the crews of ships of war, or merchant vessels of their nation, who may be guilty or be accused of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To that end the consuls of France in the United States shall apply to the magistrates designated in the act of Congress of May 4, 1826—that is to say, indiscriminately to any of the Federal, State, or municipal authorities; and the consuls of the United States in France shall apply to any of the competent authorities and make a request in writing for the deserters, supporting it by an exhibition of the registers of the vessel and list of the crew. Upon such request alone, thus supported, and without the exaction of any oath from the consuls, the deserters not being citizens of the country where the demand is made, either at the time of their shipping or of their arrival in the port, shall be given up to them. All aid and protection shall be furnished them for the pursuit, seizure, and arrest of the deserters, who shall be put and kept in the prisons of the country at the request and at the expense of the consuls until these agents may find an opportunity of sending them away. If, however, such opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty, and shall not again be arrested for the same cause. (Article 9, consular convention, 1853.)

The present convention shall remain in force for the space of 10 years from the day of the exchange of the ratifications, which shall be made in conformity with the respective constitutions of the two countries, and exchanged at Washington within the period of six months, or sooner if possible. In case either party gives notice 12 months before the expiration of the said period of 10 years of its intention not to renew this convention, it shall remain in force a year longer, and so on from year to year, until the expiration of a year from the day on which one of the parties shall give such notice.

In testimony whereof the respective plenipotentiaries have signed this convention, and thereunto affixed their seals.

Done in the city of Washington the 23d day of February, A. D. 1853. (Article 13, consular convention, 1853.)

CONGRESS WIPED OUT THE TREATIES.

It will be noted that the treaty may be abrogated after one year's notice by either of the contracting parties.

In order to make the seaman legally free—the legal owner of himself—it was necessary to abrogate all treaty provisions such as the above. In order to make this abrogation effective it was necessary to repeal the domestic laws enacted for the enforcement of the treaties. This is done in the following sections (secs. 16, 17, and 18) of the seamen's act:

SEC. 16. That in the judgment of Congress articles in treaties and conventions of the United States, in so far as they provide for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign countries and for the arrest

and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels or foreign nations in the United States and the Territories and possessions thereof, and for the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment and any other treaty provision in conflict with the provisions of this act, ought to be terminated, and to this end the President be, and he is hereby, requested and directed, within 90 days after the passage of this act, to give notice to the several Governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign Governments will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions.

SEC. 17. That upon the expiration after notice of the periods required, respectively, by said treaties and conventions and of one year in the case of the independent State of the Kongo, so much as hereinbefore described in each and every one of said articles shall be deemed and held to have expired and to be of no force and effect, and thereupon section 5280 and so much of section 4081 of the Revised Statutes as relates to the arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and Territories and possessions thereof, and for the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment, shall be, and is hereby, repealed.

SEC. 18. That this act shall take effect, as to all vessels of the United States, 8 months after its passage, and as to foreign vessels, 12 months after its passage, except that such parts hereof as are in conflict with articles of any treaty or convention with any foreign nation shall take effect as regards the vessels of such foreign nation on the expiration of the period fixed in the notice of abrogation of the said articles as provided in section 16 of this act.

SEAMEN GIVEN WAGES EARNED.

In order to make the seaman economically free it was necessary to compel the vessel to pay him some of the money which he had earned. Without this his physical necessities would hold him bound to his vessel in a strange land. Hence, Congress enacted section 4 of the act:

SEC. 4. That section 4530 of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

"Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive, on demand, from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section 4529 of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes any court having jurisdiction may, upon good cause shown, set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

The penalty for refusing to comply with the law is the cancellation of the contract with full payment of wages earned; but the wages earned become due and payable at once or within two days, and in order that there may be a penalty for any undue delay, such penalty is found in section 3 of the act.

SEC. 3. That section 4529 of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

"SEC. 4529. The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is dis-

charged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within 24 hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage."

The manifest purpose of Congress was evidently that the seaman should be paid one-half part of the wages earned and not received. Congress wanted to make the seaman really free so that the selfish instinct might play in him and cause him to desert from the vessel in order that he might get more wages and the vessel be compelled to pay the wages of the port.

The master of any American vessel, who shall attempt to prevent the seaman from going on shore for the purpose of obtaining the relief granted by these sections, is prevented from so doing by section 291 of the Revised Criminal Code, which is as follows:

Whoever being the master or officer of a vessel of the United States, or on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, shall be fined not more than $1,000 or imprisoned not more than five years, or both. Nothing herein contained shall be construed to repeal or modify section 4611 of the Revised Statutes.

SEAMEN GIVEN LIBERTY.

To imprison the master must have "justifiable cause" even when the vessel is at sea or on a roadstead. In port any and all power to imprison is taken away from the master of any American vessel by section 7 of the seamen's act, which section is as follows:

SEC. 7. That section 4596 of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

"SEC. 4596. Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses, he shall be punished as follows:

"First. For desertion, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned.

"Second. For neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within 24 hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion by forfeiture from his wages of not more than two days' pay or sufficient to defray any expenses which shall have been properly incurred in hiring a substitute.

"Third. For quitting the vessel without leave, after her arrival at the port of her delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

"Fourth. For willful disobedience to any lawful command at sea, by being, at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

"Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea, by being, at the option of the master, placed in

irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port by forfeiture, for every 24 hours' continuance of such disobedience or neglect, of a sum of not more than 12 days' pay, or by imprisonment for not more than three months, at the discretion of the court.

"Sixth. For assaulting any master or mate, by imprisonment for not more than two years.

"Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than 12 months.

"Eighth. For any act of smuggling for which he is convicted and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability, and he shall be liable to imprisonment for a period of not more than 12 months."

FOREIGN VESSELS SUBJECT TO OUR LAW.

The master's power to compel obedience of seamen in port is deleted from the law. With or without permission, the seaman could always go on shore to make an appeal to the consul or a court. Under existing law the seaman may go on shore freely unless the vessel is to depart within the 24 hours and unless he absents himself from his duty—during working hours—in which instances the penalty is forfeiture from his pay. To forcibly detain him on the vessel becomes false imprisonment.

The treaties and conventions above referred to having been abrogated, foreign vessels, while within the jurisdiction of the United States, and the seamen on such vessels come within the laws of the United States. In the Wildenhus's case (U. S. Rept., 120, p. 11), Mr. Chief Justice Waite, speaking for the court, said:

> It is a part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purpose of trade it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for, as was said by Chief Justice Marshall in The Exchange (7 Cranch, 116, 114), "it would be obviously inconvenient and dangerous to society and would subject the laws to continual infraction and the Government to degradation if such merchants did not owe temporary and local allegiance and were not amenable to the jurisdiction of the country." (United States v. Diekelman, 92 U. S., 520; 1 Phillimores Int. Law, 3d ed., 483, par. 351; Twiss's Law of Nations in Time of Peace, 229, par. 157; Creasy's Int. Law, 167, par. 176; Halleck's Int. Law, 1st ed., 171.)

The exceptions mentioned by Chief Justice Waite have been deleted from the law as it existed prior to the abrogation of the treaties and conventions, and the master of any foreign vessel who seeks to hold any seaman on the vessel against his will is necessarily subject to the same law and the same writs that would apply to any master of any American vessel in a like case, and the State court, if the vessel be within the jurisdiction of a State or a Federal court, under the fifth as well as the thirteenth amendment to the Constitution of the United States, is bound to protect the seaman in his personal liberty.

FREEDOM FROM THE CRIMPING SYSTEM.

By furnishing the seaman with half of the money earned Congress sought to liberate the seaman from the iniquitous crimping

system. The power of the crimp was in the necessity of the seaman. The seaman was without means to live; the crimp furnished the means and in return determined the seaman's wages, what vessel he was to ship on, and the advance that was to be paid. By furnishing the seaman with the means to keep away from the crimp and prohibiting all payment of wages before it was earned the seaman would be benefited and be able to accept employment on any vessel paying the wages of the port or to stay away from vessels that were seeking men below such wages. This is provided in section 11 of the act, which is as follows:

SEC. 11. That section 24 of the act entitled "An act to amend the laws relating to American seamen for the protection of such seamen, and to promote commerce," approved December 21, 1898, be, and is hereby amended to read as follows:

"SEC. 24. That section 10 of chapter 121 of the laws of 1884, as amended by section 3 of chapter 421 of the laws of 1886 be, and is hereby, amended to read as follows:

"'SEC. 10. (*a*) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seamen, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

"'(*b*) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister, or children.

"'(*c*) That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

"'(*d*) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine not exceeding $500 or imprisonment not exceeding six months, at the discretion of the court.

"'(*e*) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

"'(*f*) That under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section.'"

It will here be noted that the law gives the seaman the right to allot any portion of the wages to be earned to "his grandparents, parents, wife, sister, or children."

Substantially this is the law of all maritime nations, but some give further authority to allot to a savings bank.

In the case of the *Jacob N. Haskell* the district court of the northern district of Florida held that:

The peculiar nature of maritime commerce requires that there should be safeguards thrown around this service to protect shipping and to insure performance by seamen of their contracts. I am of opinion that Congress in the passage of this statute intended that the master of the ship should at all times have in his hands to the credit of the seaman a sum equal to that which has been paid to him out of the wages earned until the end of the voyage.

In the case of Jacob Nellman *v.* Steamship London, the District Court for the Eastern District of Pennsylvania accepts the above opinion as a correct construction.

It is apparent that if the above construction be accepted the two main purposes of section 4 (the half-pay section) will not effectuate.

This section was the most warmly contested section in the whole act. The shipowners (foreign and American) who appeared in opposition were willing that the imprisonment for desertion should be repealed; they were willing that advance wages and allotment to original creditor should be abolished; but they insisted that the seaman's right to demand and actually collect one-half of the wages earned at each port would lead to endless desertions. The construction put upon the language by the shipowners was that, as the seaman went from port to port he could collect one-half of the wages then earned and not received, and in this way he would gradually get all the wages earned. They insisted further that it would be a nuisance to have to pay one-half in every port, because many vessels in the coastwise trade visit a new port every day. Congress was perfectly willing to prevent such possible nuisance and inserted the proviso that the demand must not be made oftener than once in five days. But Congress had two specific purposes in passing this section. The seaman was to be free to quit the vessel in any safe harbor in order that the wage cost might be equalized; the seaman was to receive one-half wages earned to send to his people or to pay off obligations which he might have contracted, or to meet current needs on leaving. The opposition of the shipowners was perfectly well understood and disregarded.

Reading section 11 it becomes plain that the shipowners may, by taking advantage of the construction placed on section 4 by these courts, defeat the purpose of Congress by insisting that the men employed shall allot one-half of their wages, and the seaman, being destitute and unable to obtain advance, would be held to his vessel by his economic need.

The foreign shipowner would promptly insist upon allotment to relatives or a savings bank, and this would destroy the arch in the structure, the whole purpose of equalization would fail, and the foreign shipowner regain his advantage in competition.

The foreign shipowner can not seriously complain. He is on an exact equality with American vessels in obtaining men.

EQUALITY OF SKILL AND EXPERIENCE.

For the purpose of promoting safety at sea it was necessary to provide a definite standard of skill in the men employed. England had recognized this in her emigrant vessels; the German shipowners

had recognized it by adopting it for all German vessels, under article 1148 of the German law dealing with insurance of employees; and Australia and New Zealand had adopted it for all vessels within their jurisdiction; and all had placed the time of experience needed at three years. In the case of In re Pacific Mail Steamship Co. (C. C. A., 64, p. 410) it had been decided that any vessel where the crew could not understand the language of the officers, is inefficiently manned. For these reasons, but also with the further purpose of equalizing the wage cost, Congress enacted section 13 of the seamen's act and made it applicable to all vessels "of 100 gross tons and upward." Section 13 is as follows:

SEC. 13. That no vessel of 100 tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes, and except as provided in section 1 of this act, shall be permitted to depart from any port of the United States unless she has on board a crew not less than 75 per centum of which in each department thereof are able to understand any order given by the officers of such vessel, nor unless 40 per centum in the first year, 45 per centum in the second year, 50 per centum in the third year, 55 per centum in the fourth year after the passage of this act, and thereafter 65 per centum of her deck crew, exclusive of licensed officers and apprentices, are of a rating not less than able seamen. Every person shall be rated an able seaman, and qualified for service as such on the seas, who is 19 years of age or upward and has had at least three years' service on deck at sea or on the Great Lakes on a vessel or vessels to which this section applies, including decked fishing vessels, naval vessels, or Coast Guard vessels, and every person shall be rated an able seaman and qualified to serve as such on the Great Lakes and on the smaller lakes, bays, or sounds who is 19 years of age or upward and has had at least 18 months' service on deck at sea or on the Great Lakes or on the smaller lakes, bays, or sounds, on a vessel or vessels to which this section applies, including decked fishing vessels, naval vessels, or Coast Guard vessels and graduates of school ships approved by and conducted under rules prescribed by the Secretary of Commerce may be rated able seamen after 12 months' service at sea: *Provided*, That upon examination, under rules prescribed by the Department of Commerce as to eyesight, hearing, and physical condition such persons or graduates are found to be competent: *Provided further*, That upon examination under rules prescribed by the Department of Commerce as to eyesight, hearing, physical condition, and knowledge of the duties of seamanship a person found competent may be rated as able seaman after having served on deck 12 months at sea or on the Great Lakes; but seamen examined and rated able seamen under this proviso shall not in any case compose more than one-fourth of the number of able seamen required by this section to be shipped or employed upon any vessel.

Any person may make application to any board of local inspectors for a certificate of service as able seaman, and upon proof being made to said board by affidavit and examination, under rules approved by the Secretary of Commerce, showing the nationality and age of the applicant and the vessel or vessels on which he has had service and that he is entitled to such certificate under the provisions of this section, the board of local inspectors shall issue to said applicant a certificate of service, which shall be retained by him and be accepted as prima facie evidence of his rating as an able seaman.

Each board of local inspectors shall keep a complete record of all certificates of service issued by them and to whom issued and shall keep on file the affidavits upon which said certificates are issued.

The collector of customs may, upon his own motion, and shall, upon the sworn information of any reputable citizen of the United States setting forth that this section is not being complied with, cause a muster of the crew of any vessel to be made to determine the fact; and no clearance shall be given to any vessel failing to comply with the provisions of this section: *Provided*, That the collector of customs shall not be required to cause such muster of the crew to be made unless said sworn information has been filed with him for at least six hours before the vessel departs, or is scheduled to depart: *Provided further*, That any person that shall knowingly make a false affidavit for such purpose shall be deemed guilty of perjury and upon conviction thereof shall be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, within the discretion of the court. Any viola

tion of any provision of this section by the owner, master, or officer in charge of the vessel shall subject the owner of such vessel to a penalty of not less than $100 and not more than $500: *And provided further*, That the Secretary of Commerce shall make such rules and regulations as may be necessary to carry out the provisions of this section, and nothing herein shall be held or construed to prevent the board of supervising inspectors, with the approval of the Secretary of Commerce, from making rules and regulations authorized by law as to vessels excluded from the operation of this section.

LAW IS EQUALIZING WAGES.

To show that the act in so far as it is permitted to operate is effectuating the purpose of Congress in equalizing the wage cost in foreign and domestic vessels, we quote from the forty-first annual report of the Legal Aid Society, whose principal officers are: Charles E. Hughes, president; Carl L. Schurz, vice president; Allen Wardwell, treasurer; Cornelius P. Kitchell, secretary, and Leonard McGee, attorney in chief. On pages 19 and 20 of that report is the following:

Never before has the seamen's branch been called upon to assist in having construed so many new questions of law, owing to the changes in our old statutes, due to the new seamen's bill. The effect of the seamen's bill as enforced, particularly as to the provisions relating to advance notes or advance wages, and the right of seamen to collect half their wages in American ports, as applicable to American and foreign vessels, is by far the greatest and most important of anything that has transpired in the shipping world for a long time. The Legal Aid Society took action in favor of abolishing the advance note or of making a law abolishing the payment of wages in advance of the time earned; this action was taken when the bill was pending before the Committee on Merchant Marine and Fisheries in Congress. Our activities were in line with the provision of the seamen's bill, abolishing involuntary servitude and removing the remedies given to foreign governments and foreign shipowners, to arrest seamen who desert in ports of the United States. Seamen, being given a right on American and foreign vessels alike, to demand one-half wages or half the wages earned by them and unpaid, in American ports, have been able to enforce that right by the provision of the law which enables them to bring suit for the full amount of wages owing them in case the master refuses to pay them half. I am inclined to believe the theory and actual operation of the seamen's bill is bound in time to prove its soundness and efficiency.

I am informed that seamen coming here on foreign vessels which are sent to American ports to compete in American trade leave their vessels unless the master voluntarily guarantees them an increase in wages, which will bring their average earnings up to a par with the average earnings of American seamen, and other seamen in American ports, which have already arrived at the American standard. As a rule, seamen on foreign ships demand one-half their wages and then quit. The result is, the foreign ships' master must refurnish his vessel with a crew before leaving. To do this, he must apply to shipping masters or one of the seamen's institutions who supply seamen, but he has to pay the going rate of wages in the port of New York or Norfolk, or whatever port he happens to be in.

The seamen then take the precaution to see that there is incorporated in their contracts of hiring, a provision that they shall be paid off in ports of the United States only. This assures them that they will always be discharged in a port paying wages as high as the ones in the United States, or that they shall be returned by such foreign owners to ports of the United States, where they will again have an opportunity of securing the best rate of wage. One need not be a mathematician or a student of economy to conclude that the enforcement of this legislation means the creation of an opportunity to the American shipowner to compete with foreigners on a par, so far as labor cost is concerned, and secondly, gives America an opportunity to build up a merchant marine by reason of the fact that higher wages are paid on board all vessels and rules for safety appliances, better food, larger crews' quarters, and general conditions on board, are enforced on American vessels. An interest in shipping is stimulated which has certainly never before existed. Government records show that some 1,162 American vessels have been built and launched in the United States during the past year.

SAFETY PROVISIONS APPLY TO FOREIGN VESSELS.

The disaster to the *Titanic* (nearly 1,600 persons lost on account of inefficient equipment with lifeboats and men to handle them) caused Congress to enact section 14, which is as follows:

SEC. 14. That section 4,488 of the Revised Statutes is hereby amended by adding thereto the following: "The powers bestowed by this section upon the Board of Supervising Inspectors in respect of lifeboats, floats, rafts, life preservers, and other life-saving appliances and equipment, and the further requirements herein as to davits, embarkation of passengers in lifeboats and rafts, and the manning of lifeboats and rafts, and the musters and drills of the crews, on steamers navigating the ocean, or any lake, bay, or sound of the United States, on and after July 1, 1915, shall be subject to the provisions, limitations, and minimum requirements of the regulations herein set forth, and all such vessels shall thereafter be required to comply in all respects therewith: *Provided*, That foreign vessels leaving ports of the United States shall comply with the rules herein prescribed as to life-saving appliances, their equipment, and the manning of same."

It will be noted that here is a proviso, which make "the rules herein prescribed as to life-saving appliances, their equipment, and the manning of same" applicable to all foreign vessels. Again the safety of the traveling public and the equalization of the wage cost are coupled together. Equal skill means equal wage in the same port.

Among the regulations and rules is the following about manning boats:

CERTIFICATED LIFEBOAT MEN—MANNING OF THE BOATS.

There shall be for each boat or raft a number of lifeboat men at least equal to that specified as follows: If the boat or raft carries 25 persons or less, the minimum number of certificated lifeboat men shall be 1; if the boat or raft carries 26 persons and less than 41 persons the minimum number of certificated lifeboat men shall be 2; if the boat or raft carries 41 persons and less than 61 persons the minimum number of certificated lifeboat men shall be 3; if the boat or raft carries from 61 to 85 persons, the minimum number of certificated lifeboat men shall be 4; if the boat or raft carries from 86 to 110 persons, the minimum number of certificated lifeboat men shall be 5; if the boat or raft carries from 111 to 160 persons, the minimum number of certificated lifeboat men shall be 6; if the boat or raft carries from 161 to 210 persons, the minimum number of certificated lifeboat men shall be 7; and, thereafter, 1 additional certificated lifeboat man for each additional 50 persons: *Provided*, That if the raft carries 15 persons or less a licensed officer or able seaman need not be placed in charge of such raft: *Provided further*, That one-half the number of rafts carried shall have a capacity of exceeding 15 persons.

The allocation of the certificated lifeboat men to each boat and raft remains within the discretion of the master, according to the circumstances.

By "certificated lifeboat man" is meant any member of the crew who holds a certificate of efficiency issued under the authority of the Secretary of Commerce, who is hereby directed to provide for the issue of such certificates.

In order to obtain the special lifeboat man's certificate the applicant must prove to the satisfaction of an officer designated by the Secretary of Commerce that he has been trained in all the operations connected with launching lifeboats and the use of oars; that he is acquainted with the practical handling of the boats themselves; and, further, that he is capable of understanding and answering the orders relative to lifeboat service.

Section 4463 of the Revised Statutes as amended is hereby amended by adding the words "including certificated lifeboat men, separately stated," to the word "crew" wherever it occurs.

MANNING OF THE BOATS.

A licensed officer or able seaman shall be placed in charge of each boat or pontoon raft; he shall have a list of its lifeboat men and other members of its crew, which shall be sufficient for her safe management, and shall see that the men placed under his orders are acquainted with their several duties and stations.

A man capable of working the motor shall be assigned to each motor boat. The duty of seeing that the boats, pontoon rafts, and other life-saving appliances are at all times ready for use shall be assigned to one or more officers.

The regulations are in substance those that were agreed upon by the International Conference on Safety at Sea held in London, England.

In passing this law Congress had before it, for such remedies as might be devised, some very serious and growing evils:

The white race was leaving the sea, oriental races were filling the vacancies; sea power was gradually passing from the white race; a steadily increasing loss of life at sea caused by inefficient manning of vessels—seamen unskilled in their calling and unable to understand and execute orders at all times; the well-recognized decadence of the national merchant marine; the practical absence of native or naturalized seamen; and the therefrom resulting danger to the Nation.

Any remedies that would not cause the American to again seek the sea; that would not furnish the requisite skill—the ability to understand and execute orders; that would not restore the American merchant marine, would not meet the situation. It was a question of getting the right kind of men.

Americans would not become seamen unless the conditions were so improved that they could become seamen without loss of self-respect. The living conditions on the vessels had to be improved and the earning capacity so increased that the seaman could maintain a family, or there must be hope for this in the future. To create such conditions in American vessels only would mean to drive the few remaining American vessels from the ocean.

CONGRESS WANTED AMERICAN MEN AND SHIPS.

It has been found that two or more free men will not be kept at the same work for any length of time unless their wages are the same. Experience has further taught that any definite standard of skill tends to equalize the wages which must be paid. The remedy seemed, therefore, to be to enact laws which would tend to improve the condition of the American seaman and to make such laws, so far as this could be done, applicable to all vessels coming within the jurisdiction of the United States.

Foreign shipowners and their American partners, shipowners or others, who had invested money in foreign vessels fully understood what such legislation would mean to them. They would have to pay the American wage rate. Released economic law would be no respecter of persons, classes, or nations, and so they fought every inch of the way.

They appealed to their own Governments to send protests to the United States, and those Governments protested; they appeared before the committees of Congress and tried to show that such law would be destructive to American shipping; they warned Congress that foreign shipowners would not send their vessels to American ports; and some American shipowners joined in the warning by saying that they would sell their vessels to foreigners—they would be compelled to do this.

When Congress, nevertheless, passed the bill, they appealed to the President to veto it. When the President signed the bill and thus it

became the law, they appealed to the people of the United States, using for this purpose the chambers of commerce and, through the aroused class interests, such part of the daily and monthly press as could be deceived or would take orders. Some shipowners, who for any reason sold any of their vessels, informed the public, through the press, that the "iniquitous seamen's law" had forced them to sell. They tried to nullify the law through regulations, which the Department of Commerce had the right to make, and in this they have been so successful that the language clause is nullified and other parts of the act seriously injured. These errors of judgment will have to be rectified, as no doubt they will be, or the act will fail to accomplish the purpose intended by Congress.

As the shipowners have fought for what they conceived to be their class interests before Congress, the President, the public, and in the department, so they are now before the courts. A committee of shipowners in London, such is the information, is to use the best American legal talent obtainable to contest the seamen's act in the courts, presumably on the grounds of the comity of nations, international law, and that Congress exceeded its power in passing this law.

When this legislation is considered in connection with the friendly relations, which ought to govern the conduct of one nation to another, it is not easy to see how the question of comity can at all arise. The United States enacts certain laws dealing with its seamen; the purpose is to induce a better class of men to seek the sea. Better men are needed for the safety of vessels, the safety of life at sea, and for the safety of the Nation. It is part of the settled policy of the United States that there shall be no involuntary servitude, except as a penalty for crime, within its jurisdiction. Americans would not seek the sea while the law governing seamen did not conform to this principle. This Nation, for its own protection, felt impelled to so change the law governing seamen that it would be in harmony with the basic policy of the Nation. In doing this, it did not seek to discriminate in its own favor, it did not discriminate against any nation or between them. There seems to be no reason for any belief that the United States had any but the best and friendliest motives.

Viewed in the light of the interests of shipowners as such, there is no discrimination. The shipowners of the United States and of all other nations are, when within the jurisdiction of the United States, placed on a perfect equality. Seamen who are dissatisfied with the wages or treatment which they receive may leave the vessels on which they are serving. That this freedom granted to seamen is by them used to improve their condition is natural and was expected. It is part of the purpose to improve the personnel of the merchant service. It may be that other nations, through the precedent set by the United States, may feel impelled to adopt similar laws to govern their seamen, and shipowners of other nations may, from this point of view, consider this legislation as unfriendly to them; but to this contention, if it shall in fact be made, the answer seems obvious. Any class may and is likely to protest when deprived of any special privilege; but such protests arise out of selfish motives and they are inevitably swept away by the advancing civilization based upon Christianity. The slavery or serfdom which bound the toilers on land has passed from all Christian countries. The corresponding status of the seaman must necessarily follow.

These questions were very seriously considered by Congress and the bill was passed. It was seriously considered by the President, he signed it, and it became the law.

While Congress had these very questions under consideration the following memorandum was prepared for the use of such members as had the matter more immediately before them:

THE BEARING AND APPLICATION OF THE PRINCIPLES OF INTERNATIONAL LAW UPON THE SEAMEN'S BILL.

Provisions of the seamen's bill which may appear objectionable:

Section 3 of the Senate bill and section 4 of the House bill provide for the payment of one-half of the wages which shall be due at any port where such vessel shall load or deliver cargo during the voyage. At the end of each of these respective sections occurs a proviso which makes them applicable to "seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

Section 10 of the Senate bill and section 11 of the House bill forbid advance wages and allotments. Paragraph (*e*) at the end of each of these sections provides: "That this section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

Section 12 of the Senate bill and section 13 of the House bill provide that a certain per cent of the crew must be able to understand the language of the officers; that a certain per cent must be able seamen; that certain life saving equipment and appliances must be carried. The language is: "That no vessel shall be permitted to depart from any port of the United States unless it conforms to the standards laid down in those sections."

Since these are the only sections which apply to foreign vessels, here only could objections be taken by foreign powers. It will be observed that the first two groups of sections named, have to do with the welfare of seamen. The public policy is to give to this class of labor greater economic freedom, so that Americans will return to the sea. The last group of sections, while having to do with the welfare of seamen, are primarily for the purpose of protecting the public by making travel by water less dangerous to life.

To make these policies effective it becomes necessary to extend the rules laid down to foreign as well as American vessels. Thus public safety would be but little protected if these requirements were applied only to American vessels, for the great bulk of the passenger carrying is done in foreign vessels. The provisions as to wage advances and payments if not applied to foreign vessels as well, would only serve to further discriminate against American seamen, make their employment more difficult, and drive them from the water. Thus the exact opposite of the intended result would be attained. In this law is invoked the principle that the remedy must be coextensive with the evil or the purpose of the law will be defeated. This is the same principle made use of in our quarantine laws and regulations. If quarantine laws were applicable only to American vessels their efficiency would be materially lessened.

From the above it follows that this bill is no wider in its application than is necessary to make it effective and thus carry out the public policy of Congress. Our national sovereignty must be limited indeed if this can not be done. The bill does not attempt to control foreign citizens or foreign ships outside of the jurisdiction of the United States. If it be objected that this legislation contravenes the law of nations, that objection must be predicated upon the proposition that a sovereign does not have complete jurisdiction within its own territory whenever the welfare and safety of its nationals are at stake. The validity of this proposition will next be considered.

IS THE JURISDICTION OF A NATION WITHIN ITS OWN TERRITORY EXCLUSIVE AND ABSOLUTE?

Chief Justice Marshall, in the case of Schooner Exchange *v.* McFadden (7 Cranch, 116, 136), said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply

a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exception, therefore, to the full and complete power of a nation within its own territories must be traced to the consent of the nation itself. They can flow from no other legitimate source." (Moore Digest International Law, vol. 2, p. 4; Wharton Int. Law., p. 140.)

Vattel's Law of Nations, at page 40 (old edition), lays down the principle that the right to trade is not a natural right:

"Every nation has a right to choose whether it will or will not trade with another, and on what conditions she is willing to do it. If one nation has for a time permitted another to come and trade in the country, she is at liberty, whenever she thinks proper, to prohibit that commerce, to restrain it, to subject it to certain regulations, and the people who have carried it on can not complain of injustice."

"The right to trade 'depends upon the option of a nation to annex any conditions it may see fit to the admission of foreign vessels into its ports, whether they be public or private.'" (Wheaton Int. Law, 8th ed., p. 163.)

Chief Justice Waite, in the Wildenhus case (120 U. S., 1), said:

"It is a part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purpose of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for as was said by Chief Justice Marshall in The Exchange (7 Cranch, 144) it would be obviously inconvenient and dangerous to society and would subject the laws to continual infraction and the Government to degradation, if such merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country." (U. S. v. Diedelmann, 92 U. S., 520; 1 Phillimore's International Law, 3d ed., 483, sec. cecii; Twiss's Law of Nations in Time of Peace, 220, par. 159; Creasy's International Law, 167, par. 176; Halleck's International Law, 1st ed., 171; Moore International Law Digest, vol. 2, p. 7.)

Mr. Moore, in the above last-named work, volume 2, page 88, quotes from Mr. Marcy, Secretary of State, to Mr. Jackson, chargé d'affaires, Austria, under date of January 10, 1854:

"No nation has a right to supervise the municipal code of another nation, or claim that its citizens or subjects shall be exempted from the operation of such code, if they have temporarily placed themselves under it. The character of the municipal laws of one country does not furnish a just ground for another state to interfere with the execution of these laws even upon their own citizens when they have gone into that country and subjected themselves to its jurisdiction."

"The private vessels of one state entering the ports of another are not exempt from the local jurisdiction, unless by express compact, and to the extent provided by such compact." (Wheaton's International Law, 8th ed., p. 153.)

"The authority of a nation within its own territory is absolute and exclusive." (Church v. Hubbart, 2 Cranch, 187, 234; Wharton Int. Law Digest, 2d ed., vol. 1, p. 1.)

"While no effort has been made to exhaust the authorities, the above citations are amply sufficient to establish the general proposition that the jurisdiction of a nation within its own territory is exclusive and absolute. This being true, there is no ground upon which any objection to this legislation can reasonably be made. To make the matter clearer, attention is called to several large classes or subjects of analogous legislation, common to nearly all nations which show how above-named principle of sovereignty is invoked."

CLASSES OR SUBJECTS OF LEGISLATION BASED UPON THE PRINCIPLE THAT THE JURISDICTION OF A NATION WITHIN ITS OWN TERRITORY IS EXCLUSIVE AND ABSOLUTE.

1. Immigration legislation: Such legislation is in principle much more drastic than the proposed seamen's legislation. The latter imposes upon admission certain conditions requisite for the protection and reservation of our own people; the former legislation absolutely and unconditionally prohibits admission. The immigration act of 1882 encountered the same sort of foreign protests which have been made against the seamen's bill. (Cong. Rec., vol. 15, pt. 4, p. 3430.)

2. Tariff legislation, practically universal, is a bald assertion of the sovereign right to totally exclude the merchants of another sister nation from our ports and waters. The present tariff discriminates by a duty of 10 per cent ad

valorem in addition to the regular tariff unless goods are imported in vessels of the United States or in vessels of foreign countries having special arrangements with this country. This act also forfeits both ship and cargo unless imported in a vessel of the United States or in a foreign vessel belonging truly and wholly to citizens of the country from which the goods come or from which such goods can only be or most usually are shipped. (Sec. 4, subsec. J, act of Oct. 3, 1913.) These laws discriminate. The seamen's bill merely imposes like conditions on all.

3. Discriminatory tonnage dues and charges: The following excerpt from a note by the State Department to the Chinese legation, August 13, 1880, shows how exclusive is the national control over tonnage dues and tariff charges:

Like the question of alien tonnage dues, of which my former note treated, the matter of customs duties on cargo entering the ports of the United States from foreign ports is one to be exclusively decided, in the absence of specific and reciprocal exemption by treaty, according to the domestic legislation of the country. Moore International Law Digest, volume 2, page 73.

4. Pilotage, harbor, and lighthouse regulations and charges.

5. Ship manifest and ship loading regulations: The Harter Act of February 13, 1893, like the other-named classes of laws or regulations, applies to foreign vessels. This act forbids a foreign master to make a covenant in a ship manifest limiting liability for damage caused by the negligence of the master. Such a covenant is entirely valid by the native law of some of these masters, but it is forbidden here.

6. Alien labor and Chinese exclusion acts: These acts were passed to protect American labor inland. It would seem to follow that we have an equal right to protect our maritime labor. This conceded, it would appear reasonable that this power may be broadly enough exercised to accomplish the purpose for which such legislation is enacted so long as the exercise is confined to our own territorial limits. All this must be implied in sovereignty or it is a weak and meaningless term.

7. Quarantine and sanitation regulations: In these laws we require rigid inspection and disinfection of foreign vessels. The principle of exclusive territorial sovereignty is invoked in the interests of the public health. In this field we have gone so far as to require our consuls to inspect and disinfect German vessels in German ports before such vessels sail for the United States. Act of February 15, 1893. Upon the protest of the German Government we desisted upon the ground that this inspection infringed upon their territorial sovereignty. (Moore Int. Law Digest, vol. 2, p. 151.)

8. Naturalization laws and laws as to nationality. We hold to the rule of jus soli, i. e., that nationality is determined by the place of birth. Germany, Austria, Hungary, Norway, Denmark, Switzerland, Serbia, Roumania, and Salvador maintain the doctrine of jus sanguinis without qualification. Although these doctrines are contradictory each nation maintains its own rule, thus showing very clearly an important application of the principle of exclusive territorial sovereignty. (Westlake, Int. Law, pt. 1, pp. 219–220.)

9. The entire field of private international law reveals a multitude of cases where a nation enforces against aliens rules and principles of law which are directly contradictory to the laws in force in the nation to which the alien belongs. Rights arising in a foreign State may not even be recognized in the sister States.

A contract whether lawful by its proper law or not is invalid if it, or the enforcement thereof, is opposed to English interests of State, or to the policy of English law, or to the moral rules upheld by English law. (A. V. Dicey, Conflict of Laws, p. 540.)

The United States Supreme Court held, in the case of Hilton *v.* Guyot (158 U. S., 113), that a judgment rendered in France was not conclusive as to the merits of the case, but was only prima facie evidence of the justice of the plaintiff's claim, such being the rule in France as to the effect of foreign judgments, the rule of reciprocity being thus applied. (Moore, Int. Law Digest, vol. 2, p. 103.)

CONCLUSION.

It is submitted that the above-named classes of legislation, resting upon the principle of exclusive territorial sovereignty, are sufficiently analogous to the seamen's bill to clearly establish that it also is not a violation of international law.

Some of the foreign Governments have urged that this bill, if it becomes law, will force or encourage nationals of those Governments to break the laws of

their home countries. This is urged as a reason why this bill is invalid. If this position is well taken, does it not follow that our tariff law would be equally invalid if any nation had a law forbidding its nationals to pay import duties in American ports? True, this is an extreme case, but on principle wherein does it differ? The weakness in these protests is that they are based upon the proposition that a nation does not have complete sovereignty even in its own territory. How can a nation protect, preserve, and perfect itself unless it has such powers? What would quarantine regulation amount to unless we have full control of our own territory? These are doubtless the considerations which lie at the bottom of the American policy on this general subject.

As already stated, the act of February 15, 1893, charged our consuls with the duty of inspecting and disinfecting German vessels in German ports preparatory to the outbound trip to America. Germany objected to this act on the ground that it violated her sovereignty and law. Here was a case where the German Government forbade our officers to do any act which our law compelled them to do. In other words, the German law compelled our officers to break American law. This is the position of the French sailor, under the terms of the seamen's bill, while in an American port. The French law, it has been said, forbids the sailor to accept wages in an American port. Our bill permits him to accept the wages. Two points should be noticed. (1) The proposed legislation does not force the sailor to breach his own native law. (2) Even under the French law there is no legal obstacle to paying French sailors in American ports, provided it is done before a consul or vice consul. (Guide Pratique Consulats, by A. de Clercq and C. de Vallat, 5th ed., vol. 2, pp. 182–4, Paris, 1898. Translated in print of Senate Committee on Commerce, 63d, 2d. Print unnumbered.)

In the above-mentioned inspection incident our Government recognized the principle of exclusive territorial sovereignty and informed the German Government that no further enforcement of our statute would be attempted.

The attitude of the United States of the principle of exclusive territorial sovereignty is further shown by section 70 of the Consular Regulations of the United States for the year 1896. This section reads:

"The arms of the United States shall be placed over the entrance to the consulate or commercial agency, unless prohibited by the laws of the country." (Moore, Int. Law Digest, vol. 2, 134.)

Thus, even in the foreign consulates, which are in a measure free from territorial sovereignty of the foreign nation we recognize the principle of exclusive territorial sovereignty. Why should the United States deviate from its established policy?

The facts set forth in the foregoing pages are respectfully submitted to all who may feel interested, but more especially to attorneys who may have to deal with this law in the courts, where there are questions raised as to the meaning of any particular section or the validity of the law where it deals with foreign vessels within the waters of the United States. It is also earnestly recommended to such members of the press as may be desirous of obtaining the real purpose of Congress in so far as such was disclosed during the hearings and in documents available. It is submitted also for the earnest consideration of those who are now giving serious consideration to the war.

THE SEAMEN AND THE WAR.

The Government is expending some $2,000,000,000 to build ships. Ships, ships, and then ships are needed to win the war. (Lloyd George.) This means seamen, seamen, and then seamen. Owing to the peculiarity of their occupation, the number of really trained seamen can not be greatly added to during a war unless it be one of very long duration. But there are thousands of properly trained seamen in the United States. They are working in all kinds of employments. They are generally above the draft age. These men can be brought to the service of the country at sea.

These facts and the reasons for them were laid before the Shipping Board in April last. A meeting of shipowners and seamen was called by the board on May 8, and a tentative agreement was then arrived at. The shipowners gave full consent to the tentative agreement on June 6, but desired to arrange matters with the marine cooks and stewards before entering into a written arrangement. The arrangement was approved by the practically unanimous vote of the seamen by July 1. The information was sent out to the seamen generally, and a large number of seamen were coming back to the sea when the drafting of seamen into the Army began. This acted badly upon the men, and the drift of men from the shore to the sea became more slow. The men expected that the Lake Carriers' Association would be brought into the agreement, and when this did not happen they began to question the good faith of the arrangement.

The following is a copy of agreement between International Seamen's Union, Atlantic district, and shipowners, United States Shipping Board, Secretary of Commerce, and Secretary of Labor:

WASHINGTON, D. C., *August 8, 1917.*

MEMORANDUM.

The conference between the Shipping Board, committee on shipping of the Council of National Defense, and representatives of the International Seamen's Union was called to order at 9.30 a. m. May 8, 1917. Chairman Denman, of the Shipping Board, was in the chair. Those present in addition were Vice Chairman Brent, Mr. White, and Mr. Stevens, of the Shipping Board; Mr. Raymond, of the Atlantic, Gulf, & West Indies Steamship Lines; P. A. S. Franklin, of the International Mercantile Marine; Mr. Munson, of the Munson Line; Mr. Bull, of the Bull Line; Mr. Sherman, of the Grace Line; Mr. Warden, of the Standard Oil Co.; Commissioner Chamberlain, of the Bureau of Navigation. Representing the organized seamen: President Furuseth, of the International Seamen's Union; H. P. Griffin, G. H. Brown, Oscar Carlson, Dan Ingraham, and P. J. Pryor.

A general synopsis of the conference was as follows:

The representatives of the steamship lines and of the organized seamen agreed with the Shipping Board that some action ought to be taken looking to an increase in the number of seamen in order to furnish men for the vessels trading to England and France carrying supplies and to yet continue an uninterrupted coastwise trade.

To attain this purpose the representatives of the shipping lines in cooperation with the Shipping Board and the organized seamen tentatively agreed to cooperate for the attainment of this end in the following manner:

Substantially all the steamship lines will agree to pay the following wage: Sailors and firemen, $60 per month; coal passers, $50 per month; oilers and water tenders, $65 per month; boatswain, $70 per month; carpenters, $75 per month; overtime pay for cargo work, 50 cents; for ship work, 40 cents per hour. Bonus going to the war zone, 50 per cent of the wages; wages and bonus to continue until crew arrive back in the United States; $100 compensation for loss of effects caused by war conditions. The scale of wages and bonus for cooks and stewards at present in force to be maintained and continued during the continuance of this agreement.

That a certain number of boys, determined by the number of men carried, are to be employed in addition to the usual crew; that a number of ordinary seamen will be employed in proportion to the able seamen carried; taken as an instance, a vessel now carrying 8 men on deck, will carry 6 able seamen, 2 ordinary seamen, and 2 boys; such boys and ordinary seamen to have ample opportunity to learn the work usually demanded of able seamen.

That the representatives of the organized seamen shall have access to and be permitted on docks and vessels during reasonable hours.

The representatives of the seamen tentatively agree to join with the shipowners in an appeal to seamen now employed on shore to come back to the sea.

That the bonus and other conditions arising from the war shall terminate with the war and that the wages set shall remain for one year, to the end that

wages be stabilized and that the men now on shore may be induced to return to the sea.

That the seamen will use earnest efforts in cooperation with the officers to teach seamanship to the boys and ordinary seamen.

That the representatives of the organized seamen reported that this agreement had been put to a vote of their unions and ratified by their membership.

That this agreement is hereby ratified and confirmed on the 8th day of August, 1917.

P. A. S. Franklin; Frank C. Munson; Ernest M. Bull; D. S. Warden; L. A. Sherman; W. H. Raymond; R. B. Stevens, vice chairman United States Shipping Board; Andrew Furuseth; H. P. Griffin; Percy J. Pryor; G. H. Brown; Oscar Carlson.

Approved August 17, 1917.

W. B. WILSON,
Secretary of Labor.

Approved August 17, 1917.

WILLIAM C. REDFIELD,
Secretary of Commerce.

The rearrangement of the crews of vessels, which was to take place to give the young men an opportunity to come to the sea, was not complied with except in the vessels operated by the Shipping Board and in a very few other instances. This again had a bad effect. When the above arrangement was ratified the following call to the sea was in accordance therewith adopted by the committee appointed by the conference of August 1 and 2. It was signed for the committee by the chairman, Hon. George Uhler, Supervising Inspector General, Steamboat-Inspection Service, representing the Department of Commerce, and by the secretary, Hon. A. Warner Parker, law officer, Bureau of Immigration, member for the Department of Labor.

THE NATION'S APPEAL FOR MEN TO MAN ITS MERCHANT SHIPS.

The United States Government, the shipowners, the seamen, jointly issue this call to the sea.

It is a call to men who have lived upon and love the sea, but left it to return. It is a call to young men who have felt the lure of the sea, but resisted it to come now.

The message to those who have left the sea is this: The conditions which caused you to leave no longer exist. Seamen are no longer bound by laws to the vessels on which they serve. The seamen's act has conferred this and many other blessings upon them. Economic and working conditions affecting the calling have been immeasurenbly improved. Attractive wages are being paid. The importance of the seaman as a factor in the life of the Nation is being recognized. The ancient and honorable profession of seamanship is again coming into its own.

The message to the young man, the novice, is this: You can now give ear to the call of the sea and respond to its lure with confidence that upon the sea a career is again a possibility. The improvement in the conditions affecting the seaman's calling has necessarily increased its opportunities for the ambitious and industrious to secure advancement. Conditions on board vessels have been materially improved. When vessels are in port the seamen are as free as men ashore. Opportunities for learning the duties of the traditionally honorable and important calling of seamen are now to be freely had. The spirit of adventure of the young man should readily respond to this opportunity.

The message to all followers or would-be followers of the sea is this: The United States of America, above all other countries, has proven itself the friend of the seaman. That Nation needs you now. Your "bit" in its service can be a very large factor in the advancement of its interests and in the defense of those principles for which it has always stood. At this particular juncture, when history is being made, you can have a large and creditable share in the making of that history.

Many of those in our country have answered the call to become soldiers or to join the Navy. This is the third call of the country to join in the work on

ships which are carrying the soldiers, the ammunition, and the necessary commerce of the world to all ports. Sailors are as necessary as soldiers. Congress exempted seamen from the draft act, because seamen are giving important military service.

Our country is building many steamers, and it needs the men and the officers to man them as never before. The occupation of seaman affords excellent opportunities for seeing foreign lands and learning languages, as well as opportunities for aiding in the development of our commerce. Join the merchant marine now—serve your country—there is a great future before you on the sea!

An agreement has been reached between the shipowners and the seamen concerning conditions and wages calculated to assure adequate recompense and reasonable comfort to those who return to the sea or for the first time respond to its lure, and such agreement has been countersigned by the Secretary of Labor, the Secretary of Commerce, and the chairman of the Shipping Board of the United States Government.

UP TO THE PRESENT THIS CALL HAS NOT BEEN PROPERLY SIGNED.

To give this call the real effect it must of course be signed by some of the leading shipowners on the Atlantic, the Lakes, and the Pacific. So far the most influential shipowner on the Great Lakes, Mr. Coulby, president of the Pittsburgh Steamship Co., and the dominating spirit in the Lake Carriers' Association, has refused to agree to either give any passes to the officers of the unions to go on the vessels to see the men or to sign the call. The seamen who have left the sea will not come back unless there is distinct evidence of good faith. The call must be signed by representative shipowners, by the officers of the seamen's unions, and by the United States Shipping Board in the same way that the agreement is signed. There must be places made for the young men willing to come to the sea. When this is done the men will come. The people now standing in the way are the officers of the Lake Carriers' Association—Mr. Coulby.

If the call could have been issued in good faith during last summer we should now have at least 10,000 young men with sufficient training to be shipped as ordinary seamen, together with a large number of men practically ready to go on the new vessels as firemen.

As it now stands the training of seamen begun by Mr. Howard, of Boston, under authority of the Shipping Board, can and will furnish all the young men needed. They can be sent to the vessels as ordinary seamen and coal passers in sufficient numbers to be prepared for the new vessels as they shall be ready, but the experienced seamen can be obtained in no other way except through the call issued in proper form and in good faith. This done and the vessels will be safely manned without depleting the Navy, without any waste of man power or waste of tonnage.

There are now more than 1,500 steamers of 500 tons or over, without counting the vessels joined to the fleet within the last 12 months. If all these vessels can not be induced to take on the proper number of young men, the vessels commandeered by the Shipping Board and running under its orders surely can be induced to provide the places for three or four extra men, especially when some able seamen now carried are laid off. There are more than 1,200 sailing vessels of 200 or more gross tons. Here is opportunity for about 3,000 more young men to learn a seaman's work. There will hardly be any additional expense; but what little there is can surely be borne by the shipowners at this time, when they are making, as they themselves

say, oodles of money. Let the men stay at the school ships in Boston for six or eight weeks and be taught what is possible under the circumstances, then let them be sent to the merchant vessels for the real daily work of a seaman, and we shall have the seamen needed; always provided, that we can get a reasonable number of fully trained seamen now on shore back to the sea. Those men are needed for the safe operation of the vessels and to teach seamanship to the young men.

Seamen are made at sea only. Such is the undisputed verdict of history and of the personal experience of living seamen. This is no time to try over again the failures of other nations in the past nor to save our pet notions or prejudices. The men will be needed. The whole present struggle may depend upon finding the men. If they be not found, it will not be because of any fault or neglect of the seamen. At the last convention of the International Seamen's Union of America, held at Buffalo, N. Y., a few weeks since the national call was indorsed by a unanimous vote of the delegates, who thereupon issued the following call:

To all seafaring men, ashore or afloat:

The International Seamans Union of America, in annual convention assembled, representing the organized seaman of America, submits the following to all men of seafaring experience ashore or afloat:

The Nation that proclaimed your freedom now needs your services. America is at war. Our troops are being transported over the seas. Munitions and supplies are being shipped in ever-increasing quantities to our armies in Europe. The bases are the ports of America. The battle fields are in Europe. The sea intervenes. Over it the men of the sea must sail the supply ships. A great emergency fleet is now being built. Thousands of skilled seamen, seafaring men of all capacities who left the sea in years gone by as a protest against the serfdom from which no flag then offered relief, have now an opportunity to return to their former calling, sail as free men, and serve our country.

Your old shipmates—men who remained with the ship to win the new status for our craft—now call upon you to again stand by for duty. Your help is needed to prove that no enemy on the seas can stop the ships of the Nation whose seamen bear the responsibility of liberty.

America has the right, a far greater right than any other nation, to call upon the seamen of all the world for service. By responding to this call now you can demonstrate your practical appreciation of freedom won.

Let the shipowners on the Great Lakes do their share, let the agreement entered into and underwritten by the Government be carried out in good faith and the question of men for the Nation's vessels will be solved.

The question about discipline is not worth serious discussion. The law governing the merchant seaman and enforcing discipline on him is sufficiently drastic. If there be any person who doubts this let him look up the law.

O